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June 1989

TO: All Employees of AIP
FROM: T. C. Braun *TCB*
SUBJECT: REVISED EMPLOYEE HANDBOOK

Attached is the revised *Employee Handbook*. Please insert it into your *Employee Handbook* booklet and discard the old. When you have familiarized yourself with AIP's overall policies and practices, please sign and date the receipt of *Employee Handbook* on page 39 and return to Human Resources.

Please feel free to call Human Resources if you have any questions.

Employee Handbook

AMERICAN
INSTITUTE
OF PHYSICS

Revised June 1989

AMERICAN INSTITUTE OF PHYSICS LOCATIONS

One Physics Ellipse
College Park, Maryland 20740-3843
Tel: 301-409-5100 • Fax: 301-209-0843

ACT Child Care Center
Accounting
Career Services
Child Care Center
Controller's Office
Development Office
Director, Human Resources
Director, Physics Programs
Education & Employment
Statistics

Executive Director/CEO
Facility Services
Human Resources
Physics History
Public Information
Secretary
The Industrial Physical
Society of Physics
Treasurer/Chief Financial
& Administrative Officer

Suite 1101
2 Huntington Quadrangle
Malville, New York 11741-4502
Tel: 516-578-2200 • Fax: 516-549-7669

Advertising & Exhibits
Business Systems & Operations
Child Care Center
Circulation and Fulfillment
Composition Services
Corporate Communications
Editorial Operations
Executive Director/CEO
Facility Services
Graphic Production
Human Resources
Internet Publishing
Journal Production I

Journal Production II
Marketing
Production Services
Publisher, Journals
Publications
Publishing Systems
Scientific Classification
Translations and
Typesetting
Treasurer
Vice President,
Publishing

National Press Building
525 14th St., NW, Suite 1050
Washington, DC 20045-2001
Tel: 202-462-8710 • Fax: 202-462-8711

Physics Today

MEMBER SOCIETIES

The American Physical Society
Optical Society of America
Acoustical Society of America
The Society of Rheology
American Association of Physics Teachers
American Crystallographic Association
American Astronomical Society
American Society of Microscopists
American Society of Physicists in Medicine
American Vacuum Society
American Geophysical Union

OTHER MEMBER ORGANIZATIONS

Sigma Pi Sigma Physics Honor Society
Society of Physics Students
Corporate Associates

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TO AIP STAFF MEMBERS



Our organization, the American Institute of Physics, provides a wide variety of services for science societies, the physics community, students and the general public, as well as for over 100,000 people who comprise AIP's own Member Societies.

AIP is one of the world's largest publishers of physics research literature, and publishes over 100 journals and books. We also assist Member Societies and other organizations in the production and distribution of their journals. All our journals are available on-line as well as in print. We offer on-line services to other publishers and have about 40 journals from about 10 publishers on our On-Line Journal Publication System.

Through its physics programs, AIP contributes to public awareness and education. Among AIP's contributions are education programs including the Society of Physics Students, the Center for History of Physics including the Niels Bohr Library, a Corporate/Associates Program, and divisions for Public Information, Statistics (on physics education and employment), and Career Services. In these and many other ways, AIP reaches out to serve the community of physicists and the public at large.

As an AIP staff member you are advancing, directly or indirectly, the important goals of the Institute, your chosen career, and your own satisfaction.

This booklet provides you with an introduction to AIP and its personnel policies and benefits. Keep it handy for future reference. Whenever you need more information or an answer to a question that does not appear in this *Handbook*, please consult your supervisor or a member of Human Resources.

continued on next page

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One of my pleasures as AIP's Executive Director is working with fellow employees and exchanging ideas on how the organization can function better. Communication is the key to improved performance and greater job satisfaction, so please feel free to contact me with your suggestions.

Marc H. Brodsky

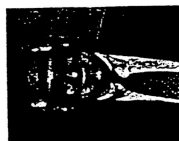
Marc H. Brodsky
Executive Director/EO
June 1999

VICE PRESIDENT, PUBLISHING DARLENE A. WALTERS



Business Systems
& Operations
Marketing
Journals & Technical
Publications
Publishing Services
Publishing Systems

TREASURER/CHIEF FINANCIAL & ADMINISTRATIVE OFFICER RICHARD BACCANTE



Accounting
Facility Services
Treasury

DIRECTOR, PHYSICS PROGRAMS JAMES H. STITH



Advertising & Exhibits
Career Services
Computing in Science
& Engineering
Education
Education & Employment
Statistics
Physics History
Physics Today
Public Information
The Industrial Physicist

SECRETARY BENJAMIN B. SNAVELY



S 000605

DIRECTOR, HUMAN RESOURCES
THERESA C. BRAUN



Benefits
Child Care Centers
Compensation
Employee Relations
HRIS
Labor Relations
Recruitment
Training

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About This Handbook

We want your job experience to be rewarding and enjoyable and we believe the more you know about the Institute, the more satisfaction you can derive from your job.

With this in mind, we have prepared this *Employee Handbook* to help you become acquainted with the Institute, its personnel policies, and the benefits offered to you as an employee. Please review the *Handbook* carefully and keep it for future use.

Due to government regulations and the changing demands of our operations, we may modify these policies and benefits from time to time. This *Handbook* contains guidelines for the Institute's use. Its terms should not be regarded as contractual in nature. We will attempt to keep you up to date regarding changes that affect you.

AIP History and Organization

The American Institute of Physics (AIP) is a not-for-profit membership corporation chartered in New York State in 1931 for the purpose of promoting the advancement and diffusion of the knowledge of physics and its application to human welfare. Its governance is provided by Member Societies. Currently there are ten Member Societies.

It is the mission of the Institute to serve the sciences of physics and astronomy by serving the Societies, by serving individual scientists, and by serving students and the general public.

Today, the Institute has a staff of nearly 560 people handling a wide range of services for more than 120,000 members of the Member Societies. In addition, 3,700 students in approximately 700 colleges and universities are members of the Institute's Society of Physics Students. The Institute's Society of Physics Students has 34,000 active members. The Institute is represented by 55 Corporate Associate members.

At the end of 1993, the Publishing Center was consolidated on Long Island, NY, while Physics Programs and Finance and Administration moved to the American Center for Physics (ACP) in College Park, MD.

The American Center for Physics opened in October 1993 in a new 120,000-square-foot building on 24 acres of land in College Park, MD. ACP provides headquarters for the American Institute of Physics, The American Physical Society (APS), the American Association of Physics Teachers (AAPT), and the American Association of Physicists in Medicine (AAPM).

The major ongoing goals of the AIP staff are described under the following headings:

Outreach
Pressing
Image
Timeliness

AIP Activities and Programs

The Institute provides publishing and other services for its Member Societies, collects dues, provides financial services, handles subscription fulfillment for 80 publications, mails bulletins and announcements, and prepares membership directories. It also publishes its own journals, conference proceedings, special reports, as well as translates and publishes Russian journals.

The Institute is best known for its extensive publishing operation. A large fraction of the world's physics research literature is published by AIP and its Member Societies. By adopting appropriate up-to-date publishing techniques, the Institute ensures that current physics and astronomy research papers are widely distributed promptly and economically. In addition to publishing original papers, AIP prepares and distributes various current physics information products to assist scientists in finding and retrieving the research contributions relevant to their work.

AIP's flagship monthly magazine, *Physics Today*, goes to 125,000 subscribers in 120 countries. A bi-monthly newsletter, *Current Contents in Science and Engineering*, jointly published by AIP and the IEEE Computer Society, reports on significant developments in computer software, hardware, and methodology for physics research and education. *The Industrial Physicist* is a bi-monthly magazine with a circulation of 60,000 that helps physicists in industry and their managers to make more effective use of physics in furthering corporate goals.

The Public Information Division is in charge of news media relations and government relations. It provides the media with information concerning developments in physics and astronomy. It operates press rooms at society meetings, provides science news reports for TV and radio programs, and prepares special news releases. It tracks development in science policy debates and works with Member Societies in coordinating efforts and distributing this information.

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Equal Opportunity in Employment

The Institute is an equal opportunity employer. We believe that every employee has the right to be treated with dignity and respect. Consequently, we will not discriminate on the basis of age, race, creed, color, sex, national origin, citizenship, disability, marital status, or any other protected characteristic. Our management team is dedicated to ensuring full compliance of this policy with respect to recruitment, advertising, hiring, placement, promotion, rates of pay, or other forms of compensation, selection of training, lay-offs, termination, and general treatment of employees.

All individuals have the right to be considered for employment on the basis of their qualifications. We are committed to employing applicants and employees on the basis of ability, knowledge, and experience. This commitment includes making reasonable accommodations for known physical or mental limitations of otherwise qualified individuals with disabilities. A reasonable accommodation is a modification or adjustment to a job, the work environment or the way things usually are done that does not pose an undue hardship to the Institute.

Immigration Reform and Control Act

In accordance with the Immigration Reform and Control Act of 1986, it is the Institute's policy to hire only those individuals who are authorized to work in the United States. Pursuant to this law, all individuals who are offered employment will be required to submit proof of their identity and employment eligibility. Employees will also be required to complete and sign, under oath, Immigration and Naturalization Service Form I-9. Form I-9 requires you to attest that you are authorized to work and the documents submitted are genuine.

If you are authorized to work in this country for a limited period of time, you will be required to submit proof of your employment authorization and sign another Form I-9 before the expiration of that period in order to remain employed by the Institute.

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The Institute assists those interested in a physics education and related career options through a range of programs and services run by its Education Division. The Society of Physics Students and Sigma Pi Sigma, the physics honor society, are part of this division.

The Career Services Division offers a variety of employment and career resources, while the Education and Employment Statistics Division carries out statistical studies.

The Center for History of Physics includes the Niels Bohr Library. It promotes the preservation of historical source materials for physics and allied fields, and offers aids to scholars, educators, and the media, including its own World Wide Web exhibits.

The Institute maintains a liaison with industry, through the AIP Corporate Associates activities and with other outside scientific and publishing organizations.

4

Questions, Suggestions, and Complaints

The best way to develop a rewarding and enjoyable work environment is through open, honest, and direct communication about all aspects of our jobs. There are times when each of us has a question, comment, or problem that needs to be addressed. The AIP policy is simple: ask it, suggest it, or let us know about it.

The Institute encourages you to bring your questions, suggestions, and complaints to management's attention. Everyone will receive careful consideration and a timely response. When many people work together, situations may be viewed differently. While no one can guarantee that you will always receive the answer you want, we will attempt to provide fair consideration to any question, suggestion, or complaint that may arise.

When you have a problem or a question, you should discuss the situation with your supervisor. You and your supervisor work together on a daily basis and our experience has shown that many problems can be effectively resolved at this level. We encourage you to speak openly and honestly with your supervisor.

If you still feel that your problem has not been dealt with fully, or if you feel uncomfortable discussing your concern with your supervisor, you may wish to discuss your concern with your Director or Division Manager, then, if necessary, the Director, Human Resources or her designee. The officers of the Institute, including the Executive Director, maintain an open-door policy. They are glad to hear from employees with special suggestions or concerns.

As you can see, we are anxious to hear from you on any subject and look forward to working with you to address your concerns. We want you to have every opportunity to discuss your problems freely.

6

You and Your Supervisor

Your supervisor is a vital part of our management team and will have more to do with your welfare and development than any other person in our organization. Your supervisor is directly involved in planning work schedules, ensuring the quality of your work, and providing you with whatever assistance you may need. Furthermore, your supervisor will explain your new job responsibilities, introduce you to your fellow employees, show you where things are, and periodically evaluate and advise you concerning your work performance.

An important aspect of a supervisor's duties is to listen to questions, suggestions, and problems and to provide an appropriate, effective response. He/she is there not only to supervise, but to make your thoughts and concerns known to upper management. We all benefit when you fully cooperate with your supervisor and discuss issues openly with him or her.

Your Introductory Period of Employment

It usually takes a period of time for new employees to get to know a new work environment and the people with whom they will be working. Similarly, an employer needs time to get acquainted with new employees and to find out how well they fit into the job for which they were hired. At AIP, this time is called an "introductory period."

The first six consecutive months of employment are considered to be an introductory period. Employee performance will be evaluated during this period to determine if employment should be continued.

At all time during your employment at AIP, including during the Introductory Period, your employment is at-will. This means that the employment relationship may be terminated by either the employee or the Institute for any reason and without prior notice.

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Business conditions and other factors may require that adjustments be made to these schedules from time to time. Also, the working hours of individual employees may need to be changed to address special business needs. The Institute reserves the right to change the normal business hours and length of the work week. However, in either of these circumstances, every effort will be made to provide employees with advance notice of changes in daily/weekly work schedules.

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Full-time and Part-time Employees

Currently regular full-time employees work 35 hours per week in New York, and 37.5 hours per week in Maryland, and receive full benefits. These hours are subject to change according to business needs.

Regular part-time employees work at least 25 hours per week and receive full benefits.

Hourly employees will usually work less than 25 hours per week at an AIP location.

Temporary employees are hired as needed on an irregular basis.

Change employees work at home and must fulfill, at a minimum, the hourly obligations agreed to upon employment.

Throughout the *Employee Handbook* the term "regular employee" will be used to denote only regular full-time and part-time employees.

Your Normal Work Week

The normal work week for (full-time) employees is 35 hours in New York and 37.5 hours (in Maryland), Monday through Friday.

New York:

There are two shifts: a day shift from 8:45 a.m. to 4:15 p.m., with one-half hour for lunch and an evening shift from 5:00 to 11:00 p.m.

Maryland:

The normal work day is from 8:30 a.m. to 5:00 p.m., with one hour for lunch.

Maryland employees may work flexible hours, within the following guidelines. All regular, full-time employees must work during the core hours of 9:00 a.m.—4:00 p.m., taking either a half-hour or an hour for lunch. In addition, at least one senior staff member must be present in each department during regular business hours (8:30 a.m.—5:00 p.m.), and telephones must be continuously covered. All flex time must be approved by the division manager.

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Attendance and Punctuality

You were hired to perform important functions as part of our team. As with any group effort, cooperation and commitment from each individual are required if the Institute is to operate effectively. Therefore, regular attendance and punctuality are expected of all employees at AIP; it is your responsibility to AIP to your fellow employees, and to yourself.

We recognize that there may be times when your absence or lateness cannot be avoided, due to illness or another legitimate reason. In such cases, you are expected to telephone your supervisor before the start of your shift. You should call in every day that you are away from your job. An employee who is absent from work for three consecutive days will be required to provide a doctor's note. Unexcused absence may subject an employee to disciplinary action, up to and including termination. Two consecutive days of unexcused absence will be regarded as a voluntary resignation.

Consistent and/or a pattern of unexcused absenteeism or unexcused lateness cannot be tolerated because of the negative effect on the Institute, the employee's performance, and that of his or her co-workers.

Attendance Incentives

All regular employees with a record of no sick leave for the year will receive two bonus days and a cash incentive bonus of \$200. Absences covered under the guidelines of the Family & Medical Leave Act (FMLA) will not be included in determining attendance incentives. This paid time off must be taken within the next year.

AIP will award a cash incentive bonus of \$200 to each regular employee with no sick leave taken during the calendar year (1 January through 31 December). New employees will be eligible for this cash incentive only for a full calendar year of employment.

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ALP will compensate all regular employees after three continuous months of employment for time lost due to personal illness or injury, or for the illness or injury of a child or other (live-in) dependent up to a maximum of ten days per calendar year. Sick leave may also be used for medical/dental appointments or laboratory tests (either for self or for a dependent).

You are expected to notify your supervisor as early in the day as possible on the first day of sick leave and every day thereafter that you are away from your job. Absences due to illness exceeding five days will require a doctor's certification that you are fully able to return to work.

Employees terminating employment for any reason are not entitled to payment for any accrued unused sick time.

Sick Leave Accrual (Sick Bank)

For all regular employees, on the first day of each year, unused sick days from the preceding year will be credited to a sick bank account.

Any unused vacation leave in excess of 30 days will also be converted to sick leave and credited to the sick leave account on the first day of each year (see "Vacations").

Accrued sick leave may be used for employee illnesses or injuries resulting in absences of eight or more consecutive work days (i.e., disability leave or for the birth of a child) or dependent illnesses covered under the guidelines of FMLA. In addition, this accrued sick leave may be used only after all 10 sick days have been exhausted in that calendar year. See Human Resources for details.

If you request leave because of a birth, adoption or foster care placement of a child, or to care for a covered relation with a serious health condition, you must use your 10 sick days before using your sick leave account. (See Family & Medical Leave Policy for eligibility and guidelines.)

Employees terminating employment for any reason are not entitled to payment for any unused sick leave accrual account.

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Personal Days

Depending on the number of official holidays in a calendar year, employees are given additional personal days as shown on the 12-day total. (This is shown on the holiday schedule distributed each Fall.)

Personal days must be requested at least two days in advance, from your supervisor. Personal day requests that cannot be accommodated will be rescheduled to a mutually agreeable time. No personal days may be carried over into the following calendar year.

As a new employee, you are eligible for a personal day after three months of employment. In a year with two personal days on the holiday schedule, new employees hired between 1 January and 30 June are eligible for both days; those hired between 1 July and 15 September are eligible for one day, subject to the three-month waiting period mentioned above.

Employees terminating employment for any reason are not entitled to payment for any unused personal time.

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All regular employees are granted twelve paid holidays which may include one or more personal days (see Personal Days). The holidays are:

New Year's Day
Martin Luther King, Jr. Day
President's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Day

Depending on the days of the week Christmas and New Year's are celebrated, two additional holidays may be added during this period.

In order to be eligible to receive holiday pay, you are required to work the immediately scheduled hours the workday preceding and the workday following the holiday. In accordance with the Institute's policy, an approved vacation day or any other accrued and paid day off is considered a day of work and supports of holiday pay eligibility.

In-house and temporary employees are eligible for paid holidays when they have been consecutively employed for at least one month, and the holiday falls within their regularly scheduled work hours.

The holiday schedule for the following year is announced in the fall. Holidays occurring during an employee's vacation are not charged against vacation time.

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Vacations

Vacation time is provided to employees by ALP in recognition of the importance of uninterrupted periods of rest, relaxation, and time with family members. Accordingly, vacation time is to be used for vacation. It may not be "cashed in" by working during a vacation period. A maximum of 30 days may be carried over from one year to the next. At the beginning of each year, all unused vacation days in excess of 30 will be credited to your sick leave accrual account (see Sick Leave Accrual), except as described under "Exceptions," on page 15.

Regular employees who have worked at ALP for at least six full months qualify for paid vacation on the following basis:

Length of Service

- Within the first year of employment at ALP: One day of vacation per month
- First anniversary through fifth anniversary (2nd, 3rd, 4th, 5th years of employment): One and one-quarter days of vacation for each month employed (15 vacation days for a full 12-month year worked)
- Sixth year of employment and each year thereafter: One and two-thirds days of vacation for each full month employed (20 vacation days for a full 12-month year worked)

Because work schedules vary, one day of vacation is defined as 1/5 of your regular weekly work schedule.

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Employees are paid for each week and have worked at AIP for at least one year qualify for paid vacation on the following basis:

- First anniversary through second anniversary (2nd year of employment)
One half day of vacation for each month employed (6 vacation days for a full 12 month year worked)
- Third year of employment and each year thereafter
One day of vacation for each month employed (12 vacation days for a full 12 month year worked)

Additional vacation days are awarded in recognition of special employee service anniversaries, as follows:

- Upon completion of 15 years of service
Five days
- Upon completion of 20 years of service
10 days
- Upon completion of 25 years of service
10 days
- Upon completion of 30 years of service
10 days

Exceptions

Following the 15th and up to the 20th year of service, you may carry over 35 days of vacation. Following the 20th year of service, you may carry over 40 days of vacation. Vacation schedule must be approved by the appropriate supervisor prior to any vacation. Supervisors are to consider schedules and business conditions for the requested vacation period and the length of service of the requesting employee.

Employees terminating employment for any reason are entitled to payment for all unused vacation time accrued.

Personnel Records

Human Resources maintains appropriate records concerning your employment at AIP. It is important that you provide Human Resources with current information to update your personnel records, particularly in case of emergency and to ensure receipt of benefits.

Employees should immediately notify their supervisor or Human Resources of any changes in:

- Name
- Address
- Telephone Number
- Marital Status
- Number of Dependents (For W-4 use and benefit enrollment)
- Emergency Information
- Beneficiary(ies) for insurance purposes
- Dependents reaching the age of 23

Service Awards

In recognition of the value of its employees, AIP offers service anniversary awards at the following intervals: 5, 10, 15, 20, 25, 30, 35, and 40 years of service. 5 and 10 year awards are given at the annual Holiday Luncheon. 15 year awards are given at the annual 15-year Club Luncheon.

Overtime

Employees are expected to work overtime when requested to do so by their supervisors. Overtime work is not permitted except when specifically authorized.

Overtime work by non-exempt employees will be paid at the regular rate for all hours up to 40 per week and at one and one-half times the regular rate of pay for all hours worked in excess of 40 per week. Every effort will be made to provide advance notice when overtime work is required.

Your Paycheck

All employees are paid bi-weekly.

When a payday falls on a holiday, payroll checks will be distributed on the preceding working day.

Your paycheck includes all earnings including any overtime that is submitted by the payroll deadline. Year-to-date earnings are itemized on the check.

If you are absent on payday, your paycheck will be held in Human Resources.

Forms required for Direct Deposit are available in Human Resources.

Performance Reviews

Our policy is to pay competitive wages in order to attract and retain quality employees. In addition, AIP periodically evaluates the performance of each employee. The Institute normally reviews employees' performance annually. All new hires will receive a performance review at the end of their six-month introductory period.

Performance is rewarded based on merit. Our performance evaluation program gives you an opportunity to sit down with your supervisor to review how your work has progressed since your last review. During this evaluation, goals for the future are discussed, and steps that may be necessary to achieve them are planned.

While we have established a schedule for performance evaluation, this schedule is not intended to limit discussions of performance, goals, and/or objectives to those times. We urge you, as we urge our supervisors, to discuss any questions or problems related to your performance on an ongoing basis. We hope this type of communication will enhance your performance and ensure our mutual success.

We believe that employees should have the opportunity to increase their knowledge and skills, to improve current performance and (when qualified) assume new responsibilities. Therefore, you are encouraged to improve your knowledge and skills in order to become qualified for more responsible positions. We assist you, where appropriate, in the achievement of your personal goals with training programs and the Tuition Assistance Plan.

Because of the training required for most positions at AIP, a regular employee may not apply for a position in another division before completing one year in your present position.

Advancement at AIP is based on merit (e.g., consistently good performance and reliability, necessary knowledge and skills, and demonstrated ability to accept increased responsibilities). The Institute will attempt to promote employees wherever possible to fill openings at higher levels of responsibility. Job openings at AIP are posted on bulletin boards at all locations, and qualified staff are encouraged to apply.

In selecting applicants for advancement, consideration will be given to past performance, experience, background and educational qualifications, length of service, and supervisor's recommendation.

Pat on the Back

A manager may, with approval from his or her Director or Officer, award a monetary "Pat on the Back" (\$100 cash) to an employee deemed to have made a significant extra effort or contribution to the department of the Institute. All "Pat on the Back" recommendations are made in writing and must be approved by the Director, Human Resources.

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Employee Benefits Program

AIP provides an excellent, comprehensive employee benefits package to all eligible employees.

The Institute may, in its discretion, amend, modify, or discontinue the benefits should it become desirable or necessary. Each fall the Institute reviews its benefit programs, looking at utilization, enrollment, and costs. Any change in coverage or cost will be communicated to employees during the Open Enrollment Period in November. Included among the coverages in our insurance benefit program are: medical, dental, vision, life insurance, travel and accident insurance, prescription drug, retirement, and short term and long term disability insurance. All regular employees are eligible for enrollment in these group plans on the first day of the month after completion of three months of continuous employment.

Domestic Partner Health Insurance Coverage

The Institute offers medical and dental/vision coverage through its insurance carriers to same sex domestic partners of its active employees. The domestic partner is responsible for the full premium cost of the insurance plan. In addition, these benefits are extended to the children of the domestic partner. Domestic partners are included in the following policies: bereavement leave, sick leave, and Family Medical Leave.

Domestic partners will be defined as two adults of the same sex who are not related by blood, who have lived together continuously for at least one year and plan to do so indefinitely, are mutually responsible for their common welfare, reside at the same address, and maintain no other domestic partnership or marriage.

Full descriptions of each of the above-mentioned coverages are provided in separate benefit booklets and the policy certificates. The benefit booklets, summarizing each provided benefit, are distributed to all new employees by Human Resources. Questions concerning eligibility, enrollment, coverages, and claims should also be directed to Human Resources.

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Upon approval, the Institute will pay up to 100% of the tuition and registration fees, and up to \$500 for course-related books in the time of enrollment, for courses taken by eligible employees. To be eligible, you must have completed AIP for at least six months as a regular employee. You must obtain a grade of "C" or better to receive 75% reimbursement or a grade of "B" or better to receive 100% reimbursement (job-related courses only). There is a maximum of \$1,500 per school year.

To be eligible as an AIP continuously and consistently for one year and maintain a grade of "C" or better to receive 75% reimbursement, and a grade of "B" or better to receive 100% reimbursement. There is a maximum of \$500 per school year (from September through August).

Approved courses include those that are pertinent to your work, but lead towards a degree at an accredited school, or that are taken to fulfill matriculation requirements.

Forms and further information can be obtained from Human Resources.

Employee Assistance Program

AIP's Employee Assistance Program (EAP) provides a highly confidential and experienced source of help for employees who are experiencing human problems such as finding sources of child care or child care, legal or financial difficulties, substance abuse, or other personal/family situations. In most instances problems of a personal nature can be resolved without the services of the EAP. Sometimes, however, this is not the case. Under such conditions, it may be in the best interest of all employees, family members, and the Institute to seek outside assistance.

The Institute has retained the services of Corporate Counseling Associates. One of the most important reasons for selecting an outside firm is to ensure confidentiality.

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Employee Referral

Any regular employee who refers an applicant who is employed by the Institute for six continuous months will receive the following referral fees:

Regular full-time position: \$400.00

Regular part-time position: \$200.00

Contingency industry & hourly positions: \$150.00

This bonus will be paid following the applicant's successful completion of the six-month introductory period provided the referring employee is still employed at AIP.

If the new employee completes a year of continuous employment and is in a regular full-time position in exempt grade 7 or above, the referring employee will receive an additional \$400.00.

Employment of Relatives

Having members of the same family employed by the Institute can be a positive factor adding to the strength of the staff and is encouraged except as set forth below.

1. No relatives may be employed in the same section.
2. No relatives may be employed in positions such that one has supervisory, directly or indirectly, over the other, or has any influence or appearance of influence over the other's employment, promotion, salary, or other related management or personnel actions.

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S 000611

The Leave Policy

You are eligible to take up to 12 weeks of unpaid family/medical leave within any 12 month period and be restored to the same or an equivalent position upon your return from leave provided you: (1) have worked for the Institute for at least 12 months, and for at least 1250 hours in the last 12 months, and (2) are employed at a worksite that has 50 or more employees within 75 miles of each location.

Reasons For Leave

You may take family/medical leave for any of the following reasons: (1) the birth of a son or daughter and in order to care for such son or daughter; (2) the placement of a son or daughter with you for adoption or foster care and in order to care for the newly placed son or daughter; (3) to care for a spouse, son, daughter (child must be under 18 years of age), or parent ("covered relation") with a serious health condition; (4) same sex domestic partners and their children; or (5) because of your own serious health condition which renders you unable to perform an essential function of your position. Leave because of reasons "1" or "2" must be completed within the 12 month period beginning on the date of birth or placement. In addition, spouses employed by the Institute who request leave because of reasons "1" or "2" or to care for an employee's parent or child with a serious health condition may only take a combined total of 12 weeks' leave during any 12-month period.

Notice Of Leave

If your need for family/medical leave is foreseeable, you must give the Institute at least 30 days prior written notice. If this is not possible, you must at least give notice as soon as practicable (within 1 to 2 business days of learning of your need for leave). Failure to provide such notice may be grounds for delay of leave. Additionally, if you are planning a medical treatment you must consult with the Institute first regarding the dates of such treatment. Where the need for leave is not foreseeable, you are expected to notify the Institute within 1 to 2 business days of learning of your need for

Leave Is Unpaid

Family/medical leave is unpaid leave (although you may be eligible for short-term disability payments and/or workers' compensation benefits under those insurance plans which are mentioned elsewhere in the Handbook). If you request leave because of your own serious health condition, sick leave will first be substituted for any unpaid family/medical leave. The substitution of paid leave time for unpaid leave time does not extend the 12-week leave period. Further, in no case can the substitution of paid leave time for unpaid leave time result in your receipt of more than 100% of your salary.

Medical and Other Benefits

During an approved family/medical leave, the Institute will maintain your health benefits as if you continued to be actively employed. If your leave is unpaid, you must pay your portion of the premium. Your health care coverage will cease if your premium payment is more than 45 days late. If your payment is more than 30 days late, we will send you a letter to this effect. If we do not receive your co-payment within 15 days of this letter, your coverage will cease. If you elect not to return to work for at least 30 calendar days at the end of the leave period, you will be required to reimburse the Institute for the cost of the health benefit premiums paid by the Institute for maintaining coverage during your unpaid leave, unless you cannot return to work because of a serious health condition or other circumstances beyond your control.

Intermittent and Reduced Schedule Leave

Leave because of a serious health condition may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours you work per workweek or workday) if medically necessary. If leave is unpaid, the Institute will reduce your salary based on the amount of time actually worked. In addition, while you are on an intermittent or reduced schedule leave, the Institute may temporarily transfer your position to another employee, provided such action does not delay your recurring leave and which has equivalent pay and benefits.

Jury duty is a civic responsibility. All employees who are required to serve on a jury on a scheduled work day will receive their regular pay from AIP for hours they are not able to work because of the time served on jury duty. They must present the court summons to Human Resources. If hours of work do not conflict with jury service, the employee is expected to report for regular work hours.

In instances where the locality pays a per diem stipend, employees keep only the amount designated for transportation and return the balance to AIP.

Bereavement Leave

Regular employees are eligible for paid bereavement leave for up to three working days (for long distance travel an extra day will be granted) in the event of a death in an employee's immediate family and one day for all other family members.

Immediate family for the purpose of this policy shall be defined as spouse, children, parents, grandparents, grandchildren, sisters, brothers, parents in law, and domestic partners (see page 22 for definition of domestic partner). Where a question arises, appropriate documentation must be submitted to the employee's supervisor to receive pay for bereavement leave.

leave, except in extraordinary circumstances. The Institute has Request for Family/Medical Leave forms available from Human Resources. You should use these forms when requesting leave.

Medical Certification

If you are requesting leave because of your own or a covered relation's serious health condition, you and the relevant health care provider must supply appropriate medical certification. You may obtain Medical Certification forms from Human Resources. When you request leave, the Institute will notify you of the requirement for medical certification and when it is due (at least 15 days after you request leave). If you provide at least 30 days' notice of medical leave, you should also provide the medical certification before leave begins. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided.

The Institute, at its expense, may require an examination by a second health care provider designated by the Institute, if it reasonably doubts the medical certification you initially provide. If the second health care provider's opinion conflicts with the original medical certification, the Institute, at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion. The Institute may require subsequent medical recertification. Failure to provide requested certification within 15 days, if such is practicable, may result in denial of further leave until it is provided.

Reporting While On Leave

If you take leave because of your own serious health condition or to care for a covered relation, you must contact the Institute on the first and third Tuesday of each month regarding the status of the condition and your intention to return to work. In addition, you must give notice as soon as practicable (within 2 business days if feasible) if the dates of leave change or are extended or initially were unknown.

If you enter the military service of the United States, you are eligible for an unpaid military leave of absence. Present Human Resources with a copy of your service papers as soon as you receive them.

During your absence, your length of service accumulates and upon application within 90 days from date of discharge from military service, you will receive the current rate of pay and other benefits which have changed during your absence.

If you are recalled to attend yearly Reserve or National Guard duty, you will be granted a temporary military leave of absence. You should give your supervisor and Human Resources as much advance notice as possible so that we may ensure proper coverage while you are away. In addition, if you are in the Reserves or National Guard and have completed your introductory period before commencing the reserve duty, the Institute will pay the difference between your service pay and your basic earnings for a maximum period of two weeks per year. Proof of reserve pay is required in order to enable the Institute to pay you accordingly.

Extended Leave For Serious Health Condition

Leave taken because of your own serious health condition may be extended on a month to month basis for a maximum of an additional four weeks upon: (1) written request from the employee; (2) proof of the employee's condition (which is continued); and (3) approval by the Institute (which is subject to its business needs). If you do not return to work on the originally scheduled return date nor request in advance an extension of the agreed upon leave with appropriate documentation, you will be deemed to have voluntarily terminated your employment with the Institute. If you request an extension of your leave beyond the initial 12-week period, you must submit medical certification of your continued serious health condition in advance for each month that the leave is extended. Reinstatement is not guaranteed on an extended leave and will depend on the Institute's needs.

No Work While On Leave

The taking of another job while on Family/Medical Leave or any other authorized leave of absence is grounds for immediate termination.

State and Local Family and Medical Leave Laws and Other Company Policies. Where state or local family and medical leave laws offer more protections or benefits to employees, the protections or benefits provided by such laws will apply.

Leave of Absence Without Pay

Approval for unpaid leave may be granted, at the discretion of management, for reasons such as important personal or family matters, educational course requirements, vacation, community or public service work, religious retreat, or military summer camp. In all cases, accrued vacation time must be used before unpaid leave begins.

Any employee who feels that he or she has been subject to harassment, or hostile witnesses such conduct, should report this immediately to his/her supervisor, the Director, Human Resources, or the Human Resources Manager. All allegations of harassment will be speedily and discreetly investigated and appropriate action taken. Employees participating in any investigation under this policy will have the Institute's assurance that their reports will be taken as a reasonable effort to resolve the problem.

Violations of this policy will not be tolerated and may result in disciplinary action up to and including discharge.

Sexual Harassment and Prevention

The Institute prohibits sexual harassment of any employee by another employee, supervisor, or third party. While it is not easy to define precisely what sexual harassment is, it certainly includes unwelcome sexual advances, requests for sexual favors and/or verbal or physical conduct of a sexual nature including, but not limited to, lewd remarks, jokes, teasing, unwanted touching or other sexually related comments.

Harassment may take the form of either overt conduct or the existence of a "hostile environment." While it is not easy to define precisely what overtly harassing conduct is, it certainly includes unwelcome advances, requests or suggestions and any act, physical, verbal or visual such as unwanted touching or offensive comments.

A harassing or hostile environment is one which allows for, and possibly encourages, jokes or degrading comments of a sexual nature directed at a person or a group of people. Such behavior will not be condoned in the workplace.

Violation of the policy may result in disciplinary action up to and including dismissal of the harasser.

If you enter the military service of the United States, you are eligible for an unpaid military leave of absence. Present Human Resources with a copy of your service papers as soon as you receive them.

During your absence, your length of service accumulates and upon application within 90 days from date of discharge from military service, you will receive the current rate of pay and other benefits which have changed during your absence.

If you are recalled to attend yearly Reserve or National Guard duty, you will be granted a temporary military leave of absence. You should give your supervisor and Human Resources as much advance notice as possible so that we may ensure proper coverage while you are away. In addition, if you are in the Reserves or National Guard and have completed your introductory period before commencing the reserve duty, the Institute will pay the difference between your service pay and your basic earnings for a maximum period of two weeks per year. Proof of reserve pay is required in order to enable the Institute to pay you accordingly.

Harassment

The Institute prohibits harassment of one employee by another employee, supervisor, or third party on the basis of race, religious creed, color, age, sex, sexual orientation, marital or veteran status, national origin, citizenship, ancestry, or mental or physical disability.

While it is not easy to define precisely what harassment is, it certainly includes teasing, slurs, epithets, threats, derogatory comments, unwelcome jokes or advances, suggestive behavior and/or verbal or physical conduct including, but not limited to, drawings, pictures, jokes, teasing, unwanted touching, or other similar conduct.

General Rules of Conduct

As we are all aware, rules and regulations are essential to the general safety and welfare of our employees and to the efficient operation of the Institute. The following rules have been established for everyone's guidance while employed at AIP. This list of rules is not intended to be all-inclusive, since it is impossible to determine all the circumstances which may arise. However, these rules will provide illustrative standards by which employees should conduct themselves. All employees of AIP are employed at-will. Accordingly, employees may be terminated at anytime, with or without cause and with or without notice.

The procedure for handling discipline may include verbal warnings, written warnings, suspension without pay, and termination of employment. However, some situations may require immediate termination.

The following are examples of unauthorized behavior:

- Insubordination
- Foul or abusive language
- Use or possession of intoxicants or illegal drugs on or off AIP's premises during work hours, reporting to work under the influence of intoxicants or illegal drugs
- Sleeping on the job
- Fighting on the job or the threat of bodily harm to others while on the job
- Misuse of or damage to Institute material or equipment or to the material or equipment of another employee
- Unauthorized removal of property belonging to the Institute or another employee
- Carelessly endangering the safety of oneself or others
- Constant pattern of tardiness or absenteeism without authorization
- Misbehavior including but not limited to: horseplay, harassing or intimidating fellow employees, making malicious or derogatory statements about fellow employees or about the Institute, misuse of confidential information, falsifying records, and illegal conduct

- yourself must be observed at all times. This includes using proper safety equipment and reporting any unsafe practice to your supervisor.
- Carrying or possessing weapons of any kind on Institute property
 - Parking in non-designated areas
 - Unauthorized use of Institute telephones
 - Solicitation of any kind by an employee of another employee while either is on working time
 - Inappropriate dress

Electronic Communications Policy

The Institute's e-mail system is normally for business use only. Electronic communications should have a business purpose and may not be used to solicit for religious or political causes, outside organizations or other personal matters unrelated to the business of the Institute. Employees should be aware that the Institute may access electronic communications at any time for any reason.

Staff of the Institute may access its electronic communications systems without notice to users. Reasons for such access include (but are not limited to): wiretapping system maintenance, prevention or investigation of alleged misuse of its systems, and assuring compliance with software copyright laws.

The Institute's policy prohibiting harassment applies to the use of the Institute's electronic communications systems. Employees who violate the Institute's Electronic Communications Policy may be disciplined, up to and including termination.

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Inclement Weather Closings

The Institute monitors all hazardous weather conditions. If a decision for a closing or late arrival is made, management will communicate information concerning revised business hours.

In New York, there is a "snow list," which is relayed as a telephone chain, once the decision to close (or to open late) has been made. Employees designated as part of the telephone relay will proceed with their departmental calls. We will make every effort to notify WALK FM 97.5, WBAB FM 102.3, and WHLI AM 1100 or 740, as early as possible of any closing or delayed opening. All employees will be notified as early as possible.

In Maryland, on the first day of inclement weather, all organizations in ACP will follow the decision announced by the University of Maryland. The next day and every day thereafter, there will be a recorded message on the AIP "snow line" (301/209-1616) advising employees of a closing or of revised business hours for the day.

If an early closing time is announced, all employees are expected to observe the revised hours of work. An employee who has a planned day off when the office is closed due to inclement weather will be charged accordingly (i.e., vacation or personal day).

At times, employees may feel unable to travel to work because of severe weather conditions on a day when the Institute is open for business. Employees may use a day of vacation or personal leave. If you have no personal or vacation time available, you may take a day of unpaid leave. Advise your supervisor at the start of your shift if you will not be able to work.

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Access Cards

Maryland employees will be issued security access cards, which will admit them into the building through security doors and will serve as identification upon request.

Bulletin Boards

Important business notices and items of general interest are continually posted by Human Resources on our employee bulletin boards at all four locations. Make it a practice to review them frequently. This will assist you in keeping up with what is current at AIP. Employees are not permitted to post material on the bulletin board or elsewhere in AIP facilities.

Child Care Centers

ACP's Child Care Center in College Park, Maryland and AIP's Center in Melville, New York accept children from six weeks through five years of age. The Maryland Center operates from 8:00 a.m. to 6:00 p.m. and the Melville Center operates from 7:45 a.m. to 5:45 p.m., Monday through Friday, when the Institute is open. Fees are based upon the child's age and the program in which the child is enrolled.

Our first priority is the nurturing development of children in a secure environment. The Centers are staffed by professional early childhood educators and provide a wonderful place to play, learn, and grow.

Dress Code

The Institute expects each employee to maintain a neat, well-groomed appearance, and to behave in a professional manner. Unbusinesslike conduct will be brought to the employee's attention by the immediate supervisor.

Identification/Access Badges

New York employees will be issued photo identification badges which will admit them to the building as well as AIP areas. At times, employees may be asked to display their badges. All visitors must register and receive a temporary identification badge at the reception desk.

INSIDE AIP

This newsletter, published monthly, is distributed to all staff.

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Lunchrooms

The Institute maintains lunchrooms at its New York and Maryland locations. Free coffee and tea are provided in the morning before 8:45 a.m. (NY) and 8:30 a.m. (MD), during lunch time, and during morning and afternoon breaks at all locations. Employees must arrange their lunch time, at the discretion of their supervisors, between the hours of 12:00 noon and 2 p.m.

Personal Visits and Telephone Calls

Any necessary personal telephone calls should be made during break or lunch periods. Should an emergency arise, your family or friends should be directed to contact Human Resources and someone there will arrange that you be notified.

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S 000614

We believe that employees should not be distracted or disrupted in the performance of their job duties. For this reason solicitation of any kind by an employee of another employee is prohibited while either person is on working time. Solicitation of any kind by non-employees is prohibited at all times. Distribution of advertising, recruiting, hand bills, printed or written literature of any kind in working areas of our Institute is prohibited at any time. Distribution of literature by non-employees in Institute premises is prohibited at all times.

Good Housekeeping

Good housekeeping not only improves the appearance of our facilities, but also prevents fires, accidents, and personal injuries. You are responsible for keeping your work area clean and neat at all times. AIP counts on you to keep our work environment clean and safe. We urge you to discard or recycle all garbage in the receptacles provided throughout our buildings.

Our mutual effort in keeping AIP's work environment clean and professional in appearance at all times will make our time at work safer and more enjoyable.

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Smoking Policy *

For the health and comfort of its employees and in compliance with applicable laws and regulations, the Institute maintains smoke-free facilities in its Maryland and Texas locations. Smoking is not permitted in AIP buildings (owned or leased property).

Drug-Free Workplace Policy

It is the policy of the Institute, in compliance with federal, state, and local regulations, to prohibit the unlawful manufacture, sale, transfer, possession, or use of a controlled substance on the Institute's premises or work sites, including the Institute's vehicles and any private vehicles parked at Institute work sites, or while engaged in Institute activity at other locations. The Institute's Drug-Free Workplace Policy is available in Human Resources. The Institute's Drug-Free Workplace Policy is a condition of employment and continued employment at the American Institute of Physics. Any employee who violates the policy shall be subject to discipline up to and including immediate discharge.

Employment at Will

All employees of the Institute are at will employees. This means that employment continues only as long as it is mutually desired by the employee or the Institute for any reason and without prior notice.

The policies and procedures of the Institute, or statements made by any employee of the Institute, whether oral or written, are not contracts. These policies, procedures, or statements are not a guarantee of employment for any length of time or for any particular terms or conditions of employment. These policies, procedures, and statements may be changed at any time, with or without notice and should not be relied upon by any employee or applicant.

The "employment at will" relationship can only be changed by an agreement, in writing, specifically modifying this relationship, and signed by Institute official.

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AIP maintains an active safety program. Your cooperation is a vital part of this program to protect you, your fellow employees and our visitors from injury. The following are some safety rules we would like you to pay particular attention to:

- Immediately report any condition or practice that appears unsafe to your supervisor.
- Operate only equipment that you are trained and authorized to use.
- Observe smoking regulations which permit smoking only in designated areas outside the buildings.
- In case of fire, designated people are stationed in each area to act as fire wardens. Please look to them for instructions, and obey their orders.
- Do not block fire corridors or fire exit doors. Furniture, equipment, or electric cords may not be stored in front of exit doors.
- Familiarize yourself with the location of fire extinguishers in all areas of our building.
- Approach walkways and intersections carefully. Do not run in the building.
- Drive cautiously in parking areas.
- Become familiar with emergency evacuation procedures.
- Wear safety gear where necessary.
- Do not bring unauthorized vehicles into AIP.
- Immediately report all injuries, however slight, to your supervisor and Human Resources. They will assist in arranging for appropriate medical attention.

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If You Must Leave Us

Your employment with AIP is not for any stated period, and you may resign at any time. We understand there may be circumstances which may necessitate the termination of your employment with us. We request that you provide your supervisor with as much advance notice as possible. Your thoughtfulness will be appreciated. Similarly, AIP may terminate the employment relationship at any time and for any reason. At the end of your employment, you will be paid for time actually worked and accrued vacation.

A Few Closing Words

The information in this Handbook is general in nature. Should questions or discrepancies arise, established procedures will be consulted for complete details. The policies, benefits, and rules contained in this Handbook may be changed or deleted at any time.

Again, welcome to AIP. Please speak to your supervisor or Human Resources if you have questions that are not answered by this Handbook.

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S 000615

Receipt of Employee Handbook

I have received a copy of the AIP Employee Handbook and understand that I am responsible for becoming familiar with the policies described in it. I understand that the information contained in it represents management's guidelines only, which may be modified from time to time. This Handbook is not a contract. I understand that neither the Handbook's policies nor any other representations made by any management representative, at the time of hire or at any time during employment, are to be interpreted or construed as a contract. I further understand that my employment is voluntary and that I am free to resign at any time, and that AIP may terminate the employment relationship whenever it determines that it is in its best interest to do so, and do so with or without notice or cause. I understand that I am employed at will.

Signature _____ Date _____
 Employee's Name
 (print name)

Receipt of _____ 39

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The Employee Handbook has been revised. Please sign and date the 'Receipt' form in the back of the handbook and return it to Human Resources. Thank you.

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INTEROFFICE MEMORANDUM

TO: All Employees of AIP

FROM: Theresa C. Braun *TCB*

SUBJECT: Revised pages for the Employee Handbook

June 17, 1997

Attached are revised pages for the Employee Handbook. Please insert each page into your Employee Handbook, discard the old page and take time to familiarize yourself with AIP's overall policies and practices.

Please review page 39 of your Employee Handbook. If you have not returned your Receipt of Employee Handbook, please do so at this time.

Please feel free to call the Personnel Division if you have any questions.

S 000617

June 1997

Full-Time and Part-Time Employees

Currently regular full-time employees work at least 35 hours per week in New York, and 37.5 hours per week in Maryland, and receive full benefits. These hours are subject to change according to business needs.

Regular part-time employees work at least 25 hours per week and receive full benefits.

Hourly employees will usually work less than 25 hours per week at an AIP location.

Temporary employees are hired as needed on an irregular basis.

Cottage employees will usually work less than 25 hours per week, at home.

Throughout the *Employee Handbook* the term "regular employee" will be used to denote only regular full-time and part-time employees.

Your Normal Work Week

The normal work week for (full-time) employees is 35 hours (in New York) and 37.5 hours (in Maryland), Monday through Friday.

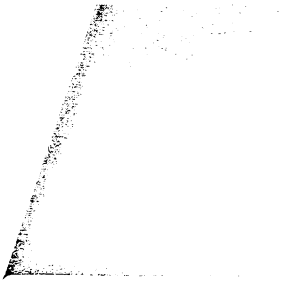
New York

There are two shifts: a day shift from 8:45 a.m. to 4:15 p.m., with ½ hour for lunch and two 15-minute breaks; and an evening shift from 5:00 p.m. to 11:00 p.m., with two 15-minute breaks.

Maryland

The normal work day is from 8:30 a.m. to 5:00 p.m., with one hour for lunch and two 15-minute breaks.

Maryland employees may work flexible hours, within the following guidelines. All regular, full-time employees must work during the core hours of 9:00 a.m. - 4:00 p.m., taking either a half-hour or an hour for lunch. In addition, at least one senior staff member must be present in each department during regular business hours (8:30 a.m. - 5:00 p.m.), and telephones must be continuously covered. All flex time must be approved by the division manager.



Liberal Leave Policy

An employee who feels unable to travel to work because of severe weather conditions on a day when the Institute is open for business, may use a day of vacation or personal leave. If you have no personal or vacation time available, you may take a day of unpaid leave. Advise your supervisor at the start of your shift if you will not be able to work.

Lunchrooms

The Institute maintains lunchrooms at its New York and Maryland locations. Free coffee and tea are provided in the morning before 8:45 a.m. (NY) and 8:30 a.m. (MD), during lunch time and during morning and afternoon breaks at all locations. Employees must arrange their lunch time, at the discretion of their supervisors, between the hours of 12:00 noon and 2 p.m.

Personal Visits and Telephone Calls

Any necessary personal telephone calls should be made during break or lunch periods. Should an emergency arise, your family or friends should be directed to contact the Personnel Division and someone there will arrange that you be notified.

Weather-Related Closings of AIP Offices

The Institute monitors hazardous weather conditions. When a decision for a closing or late arrival is made, the snow line or telephone relay list for each division is activated. All employees will be notified as early as possible. If an early closing time is announced, all employees are expected to observe the revised hours of work.

THE DIAMONDBACK

THURSDAY, APRIL 22, 2004

THE UNIVERSITY OF MARYLAND'S INDEPENDENT STUDENT NEWSPAPER

94TH YEAR | ISSUE NO. 130

“Who are we that
we shouldn’t fight
to extend the
protections of
academic
freedom?”



—Mark Leone
ANTHROPOLOGY
PROFESSOR

Redefining the bounds of academic freedom for university affiliates

BY HEATHER KEELS
Senior staff writer

Physics Today editor Jeff Schmidt considered himself an affiliate of the university — he carried a university ID card, used the university libraries and worked down the street at the American Center for Physics in College Park.

So when he was fired from his job in May 2000 after writing a controversial book and embarrassing his employers with his workplace activism, Schmidt turned to the university for protection from what he considered a breach of his academic freedom.

However, the issue finally came before the university’s Senate Executive Committee April 8. Schmidt and many of his supporters felt the committee had turned its back on a chance to expand academic freedom, redress an injustice and, at the very least, clarify the univer-

sity’s position on its affiliates’ rights.

Two university professors, Joe Auslander and Mark Leone, suggested the Senate Campus Affairs Committee work out a clear, official definition of which freedoms are implied by affiliate status, such as the relationship between the university and the American Institute of Physics, where Schmidt worked.

But after much discussion, the executive committee decided not to send the issue to the Campus Affairs Committee because several committee members believed such affiliations were so broad and diverse that uniform guidelines would be impractical.

“What they did was, in my estimation, administratively shortsighted,” said Leone, an anthropology professor and former senate chair, after the meeting.

Please See AFFILIATES, Page 3

Schmidt could recover univ. job

AFFILIATES, from Page 1

"Now there's no way that we'll ever understand how broad or narrow academic freedom exists beyond the bounds of Route 1," he said.

The executive committee's discussion centered around the various types of university affiliations. The relationship with the American Institute of Physics is unique, Ann Wylie, university President Dan Mote's chief of staff, said at the meeting. The university grants AIP members use of the its libraries, child care services and recreation center in exchange for the physics department's use of AIP's facilities.

Executive committee member Mike Brown pointed out that the university has a range of formal and

informal relationships, including one with an institution that does classified work, where it would be inappropriate for everyone involved to have the same freedom as university professors.

"There's no reason that this should be our issue," Brown said. "Not everybody who has a relationship with the campus that's formal can have the same freedoms."

"I don't know that we could ask a committee to write up a set of guidelines for any relationship in the abstract," committee member Charles Wellford said.

But Auslander said he felt there were precedents for the university protecting freedoms in far more

vague relationships. For example, the university has guidelines through the Fair Labor Association that protect the rights of workers in companies that make T-shirts and other trinkets with the university logo.

This document includes protection of employee activism, which Schmidt said was part of why he was fired. The official reason given by the American Institute of Physics was that Schmidt worked on a book he was writing during company time.

But a report by the Human Rights Committee of the Plasma Science and Applications Committee and the Institute of Electrical and Electronics Engineers states it is more likely Schmidt was fired for the views expressed in his book, *Disciplined Minds*. The book argues that

professionals are restricted by the political ideologies of their employers. The committee also believes AIP subjected Schmidt to a "smear campaign" after he embarrassed the company by his attempts to bring more diversity to the *Physics Today* staff.

Schmidt, who is still without a job after nearly four years, said while no decision from the Senate Campus Affairs Committee could recover his job, acknowledging the offense and restoring his library privileges would be a form of punitive justice.

"If everyone were assured of their freedom of expression, then we would have a lot more personal power and a lot more corrupt practices within corporations could be brought to an end," he said. "People shouldn't have to risk their jobs to speak out," he said.

Clayton Daniel Mote, Jr.
President
University of Maryland
Main Administration Building, Room 1101
College Park, MD 20742

Dear Dr. Mote:

We were dismayed to learn that a fellow member of the University of Maryland community lost his job, and along with it his library privileges at the university, because he wrote a provocative book. We are writing in support of his request that you restore his library privileges, the loss of which would set a dangerous precedent if allowed to stand.

Jeff Schmidt worked for a university affiliate, the American Institute of Physics, as a staff editor at *Physics Today* magazine — until his book *Disciplined Minds* (Rowman & Littlefield, 2000) was published and he was dismissed. (Please see his accompanying letter for details.) As you know, the university provides part of the benefits package received by employees of its affiliates. Among other things, affiliate employees receive University of Maryland photo identification cards, which entitle them to general faculty-level university privileges such as library use, Internet access, campus bookstore and cultural-event discounts, and other benefits.

The university expends state funds to support its affiliate organizations in this way, and so it must hold those organizations to certain standards. The university should not subsidize organizations that treat members of the university community in ways that violate basic principles of that community, such as freedom of expression. Furthermore, writing a book while meeting one's job requirements is well-established as a legitimate activity within the university community, and the university should not participate in any effort that discourages it.

We therefore join Jeff Schmidt in asking that you restore his library and other university privileges. We would be happy to assist in any investigation you deem necessary.

Sincerely,

Judith P. Hallett, Department of Classics, and
Rose-Marie Oster, Department of Germanic Studies,
for the University of Maryland, College Park, chapter of the
American Association of University Professors

James J. Griffin, Department of Physics

Thomas D. Cohen, Department of Physics

Joseph Auslander, Department of Mathematics

John J. Benedetto, Department of Mathematics

Raymond L. Johnson, Department of Mathematics

Steven J. Klees, Department of Education Policy and Leadership

S 000622

19 April 2001

Clayton Daniel Mote, Jr.
President
University of Maryland
Main Administration Building, Room 1101
College Park, MD 20742

Dear Dr. Mote:

I lost my library privileges at the University of Maryland recently, when my strongly pro-labor book was published. I am writing to ask you to reverse this injustice.

The university had given me library privileges because I worked for a university affiliate, the American Institute of Physics, which publishes *Physics Today* magazine. I was a staff editor at *Physics Today* for 19 years — until the Institute saw my book and summarily fired me. *Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System that Shapes Their Lives* (Rowman & Littlefield, 2000) is about the political nature of professional work and graduate education, and the need for professionals and graduate students to organize. I did a significant part of the research for it at McKeldin Library on the College Park campus.

The State of Maryland Department of Labor conducted a detailed investigation into my dismissal, prompted by my request for unemployment benefits despite being fired “for cause.” The Department held a hearing, at which the Institute claimed that it fired me because it learned from my book that I had done some of the writing in my office. I contended that the Institute dismissed me because it didn’t like my advocacy and workplace activism. After the hearing, the state issued its determination, rejecting the Institute’s charge that my work on the book at the office constituted misconduct and awarding me full unemployment benefits. The Institute did not appeal.

The speech and action that led to my dismissal is consistent with university principles. I worked with other *Physics Today* staff members to improve working conditions, increase staff participation in decision-making, and broaden the narrow range of viewpoints allowed in the magazine. Most contentious was our effort to get the magazine to live up to its claim of being an affirmative-action employer. (We watched in dismay as years of hiring and training only whites as editors left *Physics Today* with an all-white staff of 16 professionals, and a non-white secretarial staff of 3.) Throughout my 19-year tenure, the Institute invariably rated me as meeting or exceeding its job requirements. In essence, I was fired for political misconduct, and the university should not participate in punishing me for this legitimate expression and political activity. Therefore, I ask that you restore my university benefits.

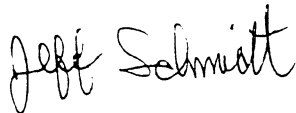
The University of Maryland allows the American Institute of Physics to use the university name in its recruiting. Thus, AIP induces individuals to relocate here — as I did when AIP moved from New York to College Park in 1993 — in part by promising them membership in the university community. Because the university

encourages this practice, I believe you are obliged to ensure that those who are recruited in this way are actually permitted to act like members of the university community. Writing a book while meeting one's job requirements is an activity that has long been seen as legitimate within the university community. I think the university community, in which individuals have on occasion been criticized for *not* writing books, would find it clearly out of line for the university to participate in punishing me for writing a book.

Although I think the state investigation was thorough and sufficient, I would be happy to cooperate fully if you wish to conduct your own investigation into the behavior of your affiliate — for example, by appointing an impartial faculty committee. However, I ask that as a state institution you follow the state finding and restore my library privileges and other university benefits now, pending the completion of any such investigation.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Schmitt". The signature is written in dark ink and is positioned below the word "Sincerely,".

S 000624



UNIVERSITY OF MARYLAND

UNIVERSITY SENATE

1100 Marie Mount Hall
College Park, Maryland 20742-7541
301.405.5805 TEL 301.405.5749 FAX
<http://www.inform.umd.edu/CampusInfo/Senate>

February 3, 2004

TO: Senate Executive Committee

FROM: Joseph Auslander
Professor Emeritus, Department of Mathematics

Mark Leone
Professor, Department of Anthropology

SUBJECT: Freedom of Speech

We ask the Senate Executive Committee to place an item on the agenda of the next Senate meeting concerning a violation of freedom of speech. It regards the dismissal of a university affiliate staff member, Dr. Jeff Schmidt.

Dr. Schmidt was a staff editor of "Physics Today" published by the American Institute of Physics, which is a university affiliate. He was fired for workplace activism, including the writing of a critical book. As a result he lost his library and other university privileges.

We propose the following resolution:

The University Senate is dismayed to learn that a university affiliate, the American Institute of Physics, dismissed a staff member, Dr. Jeff Schmidt, after discovering that he did some critical writing at work. The Senate calls upon the University to:

- Reaffirm that freedom of expression is a defining feature of the university community and that free expression must be allowed throughout this community
- Make public its affiliation agreement with the American Center for Physics
- Appoint an impartial committee of faculty members to investigate the action of the American Institute of Physics in this matter
- Restore Schmidt's university privileges, so as not to participate in punishing him for his advocacy, pending the outcome of the investigation.

S 000625

A letter in support of the restoration of his privileges was signed by eight faculty members: John Benedetto, Joseph Auslander, Raymond Johnson, Thomas Cohen, James Griffin, Steven Klees, Judith Hallett, and Rose-Marie Oster.

In addition, there was a report of a committee of the Institute of Electrical and Electronic Engineers (IEEE) which substantiated the unfairness of Schmidt's dismissal. One of the signers of this report is Professor Victor Granatstein of the University's Electrical Engineering Department.

S 000626

PHYSICS TODAY

MEMO

TO: Jeff Schmidt
FROM: Steve Benka
SUBJECT: Part-time status

SB

DATE: 14 September 1999

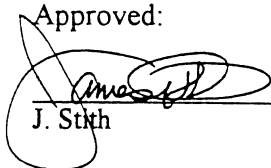
CC: James Stith, Terri Braun

You have requested a change in employment status from full-time to part-time. In your part-time capacity, you would perform two-thirds of your workload for *Physics Today*. You would complete 12 rather than 18 articles per year and be paid two-thirds of your full-time salary. Per AIP's HR policies, as a regular part-time employee working at least 25 hours per week, you will keep all of your employee benefits.

This arrangement is subject to periodic review; your status can be changed back to full-time, should management determine that your part-time status has an adverse impact on the magazine.

Your part-time status is effective as of 20 September 1999.

Approved:


J. Stith

9/17/99

S 000627

From: Stephen Benka
To: ALL-PT
Date: 17 Nov 1996 (Sun) 18:24
Subject: Job Security

TO: All PT Staff
FROM: Steve Benka
SUBJECT: Job Security

Item number 1 on the anonymous agenda expresses concern about speaking one's mind.

Nobody's job will be jeopardized by speaking freely and airing their views on matters pertinent to the magazine. I actively encourage the expression of views that may differ from my own. It is by pooling all of our individual experience, all of our individual creativity, all of our individual ideas and resources that we can get to the root causes of our concerns, and find solutions. Freedom to talk to each other about them is essential. I caution us all, however, to focus our energies and discussions on the issues --- not on the personalities involved. Certainly personal attacks are not productive.

I repeat. The retreat, and Physics Today in general, is a 'safe' place for such discussions.

There are, however, no guarantees of lifetime employment at AIP for any of us, from the Publisher on down (and up). We all have jobs to do, and we must do them well. Basing job security on job performance is sound. That won't change.

S 000628

PHYSICS TODAY

MEMO

TO: Jeff Schmidt
FROM: Steve Benka
SUBJECT: Part-time status

DATE: 14 September 1999
CC: James Stith, Terri Braun

You have requested a change in employment status from full-time to part-time. In your part-time capacity, you would perform two-thirds of your workload for *Physics Today*. You would complete 12 rather than 18 articles per year and be paid two-thirds of your full-time salary. Per AIP's HR policies, as a regular part-time employee working at least 25 hours per week, you will keep all of your employee benefits.

This arrangement is subject to periodic review; it can be rescinded, should management determine that your part-time status has an adverse impact on the magazine.

Your part-time status is effective as of 20 September 1999.

Approved:

J. Stith

Please
return
changed back to full-time

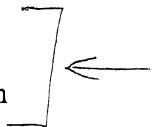
Jeff, this is
what the memo
will look like.
Jim Stith will be
here, I believe, on
Friday to sign this.
-SB

S 000629

the opportunity to help shape the magazine, but are also provided a safety net? Whether we resent it or not, PHYSICS TODAY is still the prime reason for membership in our member societies, and as Kumar Patel has pointed out, any change in PHYSICS TODAY makes our member societies very nervous. Witness the task force that has just been formed at APS to evaluate PHYSICS TODAY.

Anyway, after a lengthy conversation with Graham Collins and some subsequent speaks with Steve Benka, here are some suggestions that I came away with that should improve our working environment and might even produce a better magazine:

- Monthly general meetings. My record on this is not good, but I think we now have a simple mechanism to insure they take place: schedule the next one at the end of this one. All of the staff are expected to attend. They last two hours. Anyone can suggest items for the agenda. The group determines the agenda, but time limits must be set. The majority must be mindful of the rights of those holding minority points of view. Decorum must be courteous and respectful. Issues that cannot be addressed or resolved within allotted time limits may be held over to future meetings. Management must always reserve the right to make final decisions, but must be mindful of the collective will of the staff.
- Basic rules of conduct. No biting, no rabbit punches, no hitting below the belt, no disruptive behavior, no individual or collective intimidation. While we can't guaranteed life employment—performance reviews are still the responsibility of those with management responsibilities, and continued employment is based on satisfactory performance—the staff should be free to engage in constructive criticism and discussion without fear of retribution.
- Polled responses to new ideas and suggestions. We do it for cartoons; why not do it for



HUMAN RIGHTS COMMITTEE
of the
PLASMA SCIENCE AND APPLICATIONS COMMITTEE
of the
INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Co-Chairman:
Dr. Wallace Manheimer
Code 6707
Naval Research Laboratory
Washington, DC 20375

Co-Chairman:
Prof. Victor Granatstein
Department of Electrical
and Computer Engineering
University of Maryland
College Park, MD 20742

Report of the human rights committee, ICOPS Banff, May 2002

Last October's human rights report (A) mentioned the firing of Jeff Schmidt, an editor at Physics Today. Many people thought he was fired for the politics he expressed in a book he wrote *Disciplined Minds*, a book which claims professional are regimented to toe the 'company line' in various ways. Many hundreds of individual scientists wrote to Physics Today to protest. These are documented on a web site <http://disciplined-minds.com>. We wrote to Marc Brodsky of AIP to request more information (B), and his response (C) is enclosed. He claimed that Schmidt was fired for using AIP time for private purposes (ie free lance writing). Our initial impulse was to think in terms of some sort of compromise between Schmidt and AIP, and we gently suggested this by sending each of them our report. At the time we also thought the matter would be resolved by the courts.

A few months ago, we got a letter from Schmidt, we have had several others since then. Among other things he told us the dispute was not being resolved in the courts. Also he told us he would still be willing to reach a compromise with AIP and that he has been unable to gain other employment, largely due to the way he left AIP, ie no credible reason, no recommendation. Also he mentioned that his savings were largely depleted. We decided to investigate further.

His web site makes several rather shocking allegations, among them:

1. Schmidt was given a gag order and told not to talk critically about AIP.
2. He was told that private conversations of any kind were not permitted in the work place.
3. He was fired despite being given many good ratings, promotions and salary increases during a 19 year career.
4. The excuse given for firing him was fraudulent in that many other AIP employees were allowed to, and in fact, even encouraged to do extracurricular work of a scholarly nature as long as their AIP deadlines were met.
5. He had gotten in trouble at AIP for pushing for more diversity in the workplace.
6. After being fired he applied for unemployment benefits from the Maryland Department of Labor. AIP tried to prevent him from collecting, but when it came time to make its case against him, did not show up to do so.

If true, these statements would be a sweeping condemnation of employment practices at AIP, an organization we all feel we are part of in some way.

S 000631

To further examine this, we contacted 3 former employees who were familiar with the situation, William Sweet, Paul Elliott, and Jean Kumagai. Sweet's and Kumagai's letters are included (D and E). Elliott sent a very long statement which we summarize here (F). They all confirm these allegations (except for 6 which we were unable to verify). In fact, if anything the situation was worse than described on the web site. Once we had these, we wrote once more to Marc Brodsky. Our letter is included (G). So far he has not responded, even though it took him only a day to respond to our first letter.

Our take: It is possible that Schmidt was fired for the politics expressed in the book. Many physicists believe this and have made their concerns known to AIP. It is also possible, and in fact seems more likely to us, that he was singled out for his efforts to bring more diversity to the workplace and for other instances of workplace activism. Then, despite a long and productive career there, AIP subjected him to a two year long smear campaign designed to damage his standing and reputation there. It then found a totally bogus reason to fire him without giving him the benefit of honest evaluation or an opportunity to defend or explain himself. What is not possible is that Schmidt was fired for the reason stated by AIP.

We feel that this is inexcusable and an appropriate area of concern for our committee. This is especially true where it is in a sense a matter internal to our own community. We feel it is vital that AIP and other APS and IEEE organizations treat their employees according to the highest standards, not like galley slaves. Accordingly we ask ExCom to pass the following resolution:

RESOLVED

The Plasma Science and Applications Committee of the IEEE deplores the firing of Jeff Schmidt by AIP. An investigation by our Human Rights Committee has convinced us that his termination was improper and should be reversed. We urge AIP to rehire Schmidt, openly welcome him back, cease all harassment of him, and give him back pay for the period of his forced unemployment

Wallace Manheimer

Victor Granatstein

D

X-Sender: wsweet@shogun.ieee.org
Date: Tue, 12 Mar 2002 15:57:23 -0500
To: Wally Manheimer <manheime@ccs.nrl.navy.mil>
From: William Sweet <w.sweet@ieee.org>
Subject: Re: Disciplined minds

Dear Mr. Manheimer,

I cannot comment directly on the circumstances of Jeff Schmidt's dismissal, since I left the magazine many years before it occurred. During the eight years I worked as a colleague of Jeff's at Physics Today, I knew him to be a conscientious, competent, and consistently hard-working employee of the magazine who always got done what he was expected to get done on time and well.

Regarding the question of working on office time, it was my own experience at Physics Today that one was permitted to do freelance work or pursue personal projects, as long as they did not interfere with or detract from one's responsibilities to the magazine. I did a great deal of freelance work openly, much of it appearing in publications read regularly by Physics Today staff.

My impression is that in journalism and publishing generally, it is taken for granted that staff--and especially younger staff--will do freelance work or work on scholarly projects, partly to further their careers, partly just for the money, and partly for the joy of it. It is not uncommon, indeed, for organizations to positively encourage such work.

For that reason alone, I strongly suspect that the stated reasons for Jeff's dismissal were spurious. As stated at the outset, however, I am not in position to speculate about what the real reasons might have been.

Sincerely,

Bill Sweet

Dear Mr. Sweet:

I am the co-chair of the human rights committee of IEEE Plasma Science and Applications Committee. Recently the firing of Jeff Schmidt over his book *Disciplined Minds* has come to our attention and we are looking into it. Jeff has said we could contact you. For our report (to be delivered to our executive committee in the ICOPS meeting in Banff, May 24) we would like to get the impressions of other coworkers and former coworkers at AIP. If you could give us your impressions of what transpired that would be very helpful to us. Particularly Jeff said that you could describe your own experience in doing free lance work while you were employed at APS. I would appreciate if you would give me your take in a return email, especially on the items I mentioned. I will be away for a week and a half or so, but hopefully you can get back to me. I may also give you a call when I get back.

S 000633

Thank you for your attention to this.

E

X-Sender: jak.interport@pop.rcn.com
Date: Sun, 21 Apr 2002 18:45:42 -0400
To: manheime@ccf.nrl.navy.mil
From: Jean Kumagai <jak.interport@rcn.com>
Subject: more about Jeff Schmidt

Dear Wally,

Thanks so much for giving me the opportunity to help your human rights committee do something on behalf of Jeff Schmidt and free expression within the science community. In my previous message, I gave brief answers to your questions about Jeff's promotions and pay raises and about the gag orders at Physics Today. Below I've provided greater detail on these two issues. I hope you find this useful for your investigation. Please let me know if I can be of further assistance.

All best,
Jean

I was a member of the Physics Today editorial staff for ten years, leaving just six months before Jeff was fired. As is the case in many workplaces, he and I and other staff members routinely discussed our interactions with management, including performance reviews, pay raises, editorial disputes, and so on. That's how I know that AIP always gave Jeff job-performance ratings of "meets job requirements" or "exceeds job requirements." (One year, management lowered his rating from "exceeds job requirements" to "meets job requirements," despite the lack of evidence that the quality or quantity of Jeff's work had fallen. Jeff contended, and I agree, that they were punishing him for his workplace activism.)

As for promotions, I attended the staff meeting where the editor announced that Jeff had been promoted. Bill Sweet received a promotion at the same time, and I remember Jeff and Bill humorously congratulating each other while the rest of us applauded. Promotions at AIP are not automatic, but are based on careful scrutiny of the employee's work. The same goes for raises. As a matter of policy, AIP does not give automatic cost-of-living raises, only merit raises. AIP would not have employed Jeff, promoted him, and given him merit raises for 19 years if he had not been doing his job to AIP's satisfaction.

I think it is crucial to note that AIP, like other employers, regularly scrutinizes the quality and quantity of each employee's work. Thus, during my decade at Physics Today, I saw coworkers put on probation, demoted, or fired for not meeting the magazine's standards. AIP never did any of these things to Jeff -- until they saw his critical writing.

In firing Jeff, AIP claimed that he had stolen from the company, referring to the opening lines of his book ("This book is stolen. Written in part on stolen time, that is.") This is a laughably baseless charge. In the opening paragraph of his book, Jeff explains that "written in part on stolen time" means "spending some office time on my own work." This describes common Physics Today workplace behavior, albeit with an attitude. At Physics Today there were no official break times; editorial employees were expected to meet their deadlines, and they took their breaks whenever they wanted along the way. All of Jeff's coworkers (including me) openly pursued personal interests during their work breaks, but Jeff was the

S 000634

only one who was punished for failing to make sure that 100 percent of his office time was work time. The difference was the nature of Jeff's break-time activities -- his workplace activism and critical writing.

Like many employers, AIP engaged in "speed-up," demanding that editors and other employees do more work in the same amount of time. Jeff was outspoken in opposing this, in the interest of both staff and readers, but he always adapted to the changing standard himself. When Jeff was fired, he told me that he was two months ahead of schedule in meeting the annual work quota that AIP had set for him -- that he had completed 12 months' worth of work in 10 months' time. Having observed his work style for ten years, I do not doubt this.

Management had to be fully aware of these facts, and therefore fully aware that Jeff's book about the politics of work was doing nothing more than expressing a critical attitude about work. But they fired him anyway, nine days after they learned of his book and its contents, a delay that indicates that their action was calculated rather than emotional. As you may have seen, on 5 April 2002 the Chronicle of Higher Education reported the numerous protests by physicists against Jeff's firing. The reporter apparently asked AIP CEO Marc Brodsky, What if the book's opening line was merely a rhetorical device? Brodsky responded, "Even if it was, it's not good for the morale of other employees." In other words, Brodsky admits that he was willing to fire Jeff simply for expressing what Brodsky considers to be a bad attitude. I think the evidence indicates that that is exactly what Brodsky did.

As for the gag orders, the one placed on Jeff was imposed a few days after the second staff retreat. The retreat had been billed as an opportunity for the editorial staff to get together and "brainstorm" about the magazine's content and direction. Much to our surprise and disappointment, however, the managers prepared a rather rigid agenda for the retreat, one not at all conducive to creative thinking and open discussion. Near the beginning of the retreat, after opening remarks by Physics Today publisher Charles Harris, Jeff asked if we could ask questions. Harris said no. Jeff then argued that staff members SHOULD be allowed to ask questions at a retreat. Harris angrily shouted "No, that's an order!", ending the discussion. When Harris later called on me to speak about my department, I criticized him for shutting Jeff up. Some others did the same thing. The staff was quite upset by the repressive atmosphere that management had established. Needless to say, nothing much was accomplished at the retreat.

The gag order instructed Jeff not to tell his coworkers that he was being restricted, but he showed the order to me and other coworkers anyway. That upset Harris, but also led to staff pressure that forced Harris to rescind the order after about two months (along with a similar order that had been imposed on another staff editor, Graham Collins).

The gag orders were soon followed by the ban on private conversations in the workplace, wherein Physics Today Editor Stephen Benka announced that all conversations between staff members had to be open to monitoring by managers. Unlike the gag order, the ban was not issued in writing but rather declared verbally to Jeff and another staff editor, Toni Feder. (Toni and I worked very closely to produce a department of the magazine.) I heard about the ban immediately from both Jeff and Toni. Although Benka announced the ban to Jeff and Toni, he said that it applied to the entire staff. Paul Elliott, another editor, overheard the announcement. The rest of the staff learned of it, ironically, through private conversations. Unlike the gag orders, the ban on private conversations in the workplace

S 000635

was never rescinded, even though Jeff formally appealed it to James Stith, a top official of the American Institute of Physics. I think the ban was aimed mainly at silencing Jeff and discouraging other staff members from talking to him.

Since leaving Physics Today in November 1999, and especially since Jeff's firing, I've often thought about the gag orders and the conversation ban and the generally repressive environment there. Unlike a lot of bad memories, though, these ones don't fade with time. I hope that the human rights committee will do whatever it can to obtain justice for Jeff. In so doing, I believe you will also be helping to improve the work environment at Physics Today, by compelling AIP to reconsider its policies and actions, and ultimately benefitting the science community at large.

S 000636

F

Summary of Paul Elliott's email:

Paul Elliott worked in a neighboring office to Schmidt for just under 5 years, from 1995-2000. Schmidt was an editor for 14 years before Elliott arrived, which was just after AIP hired a publisher (for the first time), Charles Harris, and an editor in chief, Steven Benka. From 1995-2000, according to Elliott, Schmidt was well regarded by the PT staff, met all deadlines and other obligations. But Harris, and Benka particularly increasingly became openly hostile toward Schmidt from about 1995 through 1997. During that period, Schmidt was in the forefront of staff efforts trying to get PT to hire a more staff with more diversity (virtually the entire professional PT staff apparently was white male), as well as bring about other improvements in the staff's working conditions. This effort apparently led to the embarrassment of PT management in front of higher ups at AIP and the PT advisory committee (I suppose a bunch of senior physicists).

At about this time, in the fall of 1997, Charles Harris not only gave Schmidt a written and secret gag order, which Elliott saw, but gave one to another editor, Graham Collins, whom Harris also saw as troublesome. A month or so later, under pressure from PT staff, these orders were rescinded. However in January 1998, Elliott heard Benka angrily tell Schmidt that private conversations between members of the PT staff behind closed doors were forbidden and had to take place outside after business hours. After this, Schmidt kept a very low profile at PT. If he had been a "troublemaker" before this, he certainly ceased being one at this point-but, said Elliott, there was no let-up in management's hostility toward him.

Elliott said that many members of the PT staff, certainly including Benka, used the work day for other private purposes. Elliott worked 10 feet from Schmidt for 5 years and saw no evidence that Schmidt was doing anything but his job as an editor. He certainly was not visibly working on a book. Elliott even pointed out that in late 1998 Schmidt took a 6 month unpaid leave of absence, and in retrospect, Elliott surmises that it was probably to work on his book. During that period too, said Elliott, management continued to openly malign and denigrate Schmidt.

Elliott's conclusion was that PT editorial management thought of Schmidt as a trouble maker, subjected him to "a long term smear campaign followed by prejudicial termination on a fundamentally bogus charge", and fired him as an act of revenge without giving him a chance to explain or defend himself.

S 000637

G

HUMAN RIGHTS COMMITTEE
of the
PLASMA SCIENCE AND APPLICATIONS COMMITTEE
of the
INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Co-Chairman:
Dr. Wallace Manheimer
Code 6707
Naval Research Laboratory
Washington, DC 20375

Co-Chairman:
Prof. Victor Granatstein
Department of Electrical
and Computer Engineering
University of Maryland
College Park, MD 20742

April 17, 2002

Dr. Marc H. Brodsky
Executive Director and CEO
American Institute of Physics
One Physics Ellipse
College Park, MD 20740

Dear Dr. Brodsky:

We sent you the enclosed letter concerning the firing of Jeff Schmidt and also enclosed is your response for which we thank you. We have continued to look into this matter, and we must say that with our current understanding of the situation, we find the response of AIP to be not satisfying to us. We have spoken to several people, and apparently employees at AIP are not fired for using company time for such private business as free lance writing, as long as all AIP deadlines were met. Schmidt and others have claimed that the expression 'stolen time' was not used to confess to larceny, but to emphasize the particular point made in the book. From what we know now, this seems reasonable to us.

As far as we are able to discern, Schmidt met all his deadlines at AIP and was a well regarded worker. Several people have claimed that internal records in Physics Today verify this.

S 000638

There is one factual matter which we were unable to independently verify and we wonder if you could help us out. On his web site, Jeff Schmidt claimed that when applying for unemployment benefits, AIP tried to prevent him from receiving them, but when it came time for AIP to make its case to the Maryland Department of Labor, it did not show up to do so. We tried to verify this with the aforementioned department, but these records are confidential.

Let us tell you what we think may have happened. We are not certain, but this is the simplest and most reasonable explanation of the facts which we know. Around the end of 1997, in a meeting with AIP and Physics Today's external advisory committee, Jeff Schmidt embarrassed his supervisors at Physics Today by complaining to powerful outsiders about lack of diversity in the workplace. We can certainly believe that his supervisors would frown on his taking such a complaint so far outside the chain of command. In some organizations this might be grounds for dismissal, while in others it would be acceptable behavior. If Schmidt had been fired then, for that, we would be much less sympathetic to him. While unquestionably harsh, he would have suffered a serious consequence for what might have been regarded as a serious faux pas. The firing would have been honest on the part of his employer, he would most likely have learned from the experience, and the negative impact on his reputation would have been minimized. Instead however, AIP strung him along for more than two years, a time during which Schmidt was especially trying to keep out of trouble. Finally AIP found a bogus reason for firing him, and did so in a way that would do him maximum harm. This seems inexcusable to us, and an appropriate area of concern for our committee; particularly where it involves an organization which we all support and would hope lives up to the highest standards regarding its personnel.

Anyway, this is the way we currently see it and it is the way we will present it to our Executive Committee in mid May. Do we have it wrong? We invite your response. (Mail to government facilities being what it is, if you decide to respond, please fax WMM 202-767-1607; US mail to VLG okay)

S 000639

There is one other thing. When we first looked into this matter, we thought the best solution would be some sort of compromise between you and Schmidt. That is why we sent both of you our initial report last October. Even at this late date, could that still be possible? Schmidt told us he would be willing to do so. Would AIP?

Yours very truly,

A handwritten signature in cursive script that reads "Wallace M. Manheimer".

Wallace M. Manheimer

A handwritten signature in cursive script that reads "Victor L. Granatstein".

Victor L. Granatstein

S 000640

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ms. Thersa Braun
Human Resource
American Institute Of Physics
One Physics Ellipse
College Park, MD 20740

PERSON FILING CHARGE

Schmidt, Jeff

THIS PERSON (check one)

- ☒ CLAIMS TO BE AGGRIEVED
☐ IS FILING ON BEHALF OF ANOTHER

DATE OF ALLEGED VIOLATION

Earliest

Most Recent

01/28/1998

05/31/2000

PLACE OF ALLEGED VIOLATION

College Park, MD

EEOC CHARGE NUMBER

12HA10020

FEPA CHARGE NUMBER

RF00-1135

NOTICE OF CHARGE OF DISCRIMINATION IN JURISDICTIONS WHERE A FEP AGENCY WILL INITIALLY PROCESS

(See attached information sheet for additional information)

YOU ARE HEREBY NOTIFIED THAT A CHARGE OF EMPLOYMENT DISCRIMINATION UNDER

- ☒ Title VII of the Civil Rights Act of 1964
☐ The Age Discrimination in Employment Act of 1967 (ADEA)
☐ The Americans with Disabilities Act

HAS BEEN RECEIVED BY

- ☐ The EEOC and sent for initial processing to _____
(FEP Agency)
- ☒ The Prince George's County, H.R.C. and sent to the EEOC for dual filing purposes.
(FEP Agency)

While EEOC has jurisdiction (upon the expiration of any deferral requirement if this is a Title VII or ADA charge) to investigate this charge, EEOC may refrain from beginning an investigation and await the issuance of the Agency's final findings and orders. These final findings and orders will be given weight by EEOC in making its own determination as to whether or not reasonable cause exists to believe that the allegations made in the charge are true.

You are therefore encouraged to cooperate fully with the Agency. All facts and evidence provided by you to the Agency in the course of its proceedings will be considered by the Commission when it reviews the Agency's final findings and orders. In many instances the Commission will take no further action, thereby avoiding the necessity of an investigation by both the Agency and the Commission. This likelihood is increased by your active cooperation with the Agency.

- ☒ As a party to the charge, you may request that EEOC review the final decision and order of the above named Agency. For such a request to be honored, you must notify the Commission in writing within 15 days of your receipt of the Agency's final decision and order. If the Agency terminates its proceedings without issuing a final finding and order, you will be contacted further by the Commission. Regardless of whether the Agency or the Commission processes the charge, the Recordkeeping and Non-Retaliation provisions of Title VII and the ADEA as explained in the "EEOC Rules and Regulations" apply.

For further correspondence on this matter, please use the charge number(s) shown.

- ☐ An Equal Pay Act investigation (29 U.S.C. 206(d)) will be conducted by the Commission concurrently with the Agency's investigation of the charge.
- ☒ Enclosure: Copy of Charge

BASIS OF DISCRIMINATION

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NAT. ORIGIN ☐ AGE ☐ DISABILITY ☒ RETALIATION ☐ OTHER

CIRCUMSTANCES OF ALLEGED VIOLATION

See enclosed Form 5, Charge of Discrimination.

S 000641

DATE

11/22/2000

TYPED NAME/TITLE OF AUTHORIZED EEOC OFFICIAL

James L. Lee, Director
Director

SIGNATURE

CHARGE OF DISCRIMINATION		AGENCY	CHARGE NUMBER
This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.		<input checked="" type="checkbox"/> FEPA <input type="checkbox"/> EEOC	RF00-1135 12HA10020
<u>Prince George's County, H.R.C.</u> and EEOC <i>State or local Agency, if any</i>			
NAME (Indicate Mr., Ms., Mrs.)		HOME TELEPHONE (Include Area Code)	
Mr. Jeff Schmidt		(202) 537-3645	
STREET ADDRESS		CITY, STATE AND ZIP CODE	DATE OF BIRTH
3003 Van Ness Street, N.W., Washington, DC 20008			
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME		NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Include Area Code)
American Institute Of Physics		Cat D (501 +)	(301) 209-3100
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
One Physics Ellipse, College Park, MD 20740			033
NAME		TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS		CITY, STATE AND ZIP CODE	COUNTY
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE	
<input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify)		EARLIEST LATEST 01/28/1998 05/31/2000 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):			
<p>I believe that the Respondent has retaliated against me when I was involuntarily discharged on May 31, 2000.</p> <p>On August 17, 1999, I complained to my Supervisors that the Respondent was not hiring employees (Black) in professional positions. I also complained that the Respondent was not promoting and following their Affirmative Action Program to hire Black employees in professional positions.</p> <p>On August 17, 1999, I was given a negative Performance Review, after I complained.</p> <p>In addition, on May 31, 2000, I was discharged for writing a book on company time, which is not true.</p> <p>I believe that I was treated in this manner in retaliation for my complaints of disparate treatment of employees (Black) not being hired in professional positions.</p> <p>Furthermore, from January 28, 1998 to May 31, 2000, the Respondent banned any private conversations between myself and Co-Workers (White) because they thought that I was organizing to bring about changes in their policies, including their discriminatory hiring policies.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements)	
I declare under penalty of perjury that the foregoing is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.	
Date 21 Nov. 2000		SIGNATURE OF COMPLAINANT	
Charging Party (Signature)		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year)	

21 November 2000

Prince Georges County Human Relations Commission
1400 McCormick Drive, Suite 245
Largo, MD 20774

Dear Investigator:

Thank you for speaking with me today and taking my complaint against *Physics Today* magazine, my former employer. As I will explain, *Physics Today* fired me in retaliation for opposing its all-white hiring practices, unequal pay practices and other practices in need of reform.

I was a workplace activist at *Physics Today*, which is published by the American Institute of Physics, in College Park, Maryland. While doing my assignments conscientiously and always beating my deadlines, I worked with other staff members to improve the organization. Equal employment opportunity and staff diversity was the reform that we pushed for the hardest. I pursued that all the way up to the CEO of the American Institute of Physics, who was angry at me for making an issue of it. As of 1 November 2000, *Physics Today* had an all-white professional staff (and an all-black secretarial staff). I am not talking about a staff of four or five editors, who might all be white by coincidence. I'm talking about an all-white staff of 16 professionals. In spite of *Physics Today*'s claim that it is an affirmative action employer, its editors look nothing like the physics community, the journalism community, the greater Washington, D.C., community where the magazine is based, or the nation as a whole. Since *Physics Today* moved from New York to Maryland seven years ago, it has hired many people with no journalism experience and trained them, but it has done this exclusively for white males, an unequal practice that I openly opposed.

I think it was wrong for *Physics Today* to maintain an all-white professional staff. But even if that were somehow right, I think it was still wrong for the company to fire me in part for opposing that practice. I am writing to ask that in the interest of justice you punish the American Institute of Physics heavily for that repressive action. Also, I want reinstatement, back pay and so on.

The company receives some federal funding and therefore has had to report to the federal government on its employment practices. The company reports deficiencies and promises to correct them, but its efforts are mainly for show. For example, at the time of a 1995 report showing underemployment of minority professionals at the American Institute of Physics, *Physics Today* magazine had only one minority professional. Five years later — after five years of supposed implementation of AIP's "affirmative action plan" — the magazine had no minority professionals. The magazine clearly needed help, but it punished me for bringing its deficiency to people's attention and calling for real remedial action.

The company fired me on the pretext of misconduct: They accused me of writing a book on company time. The State of Maryland Department of Labor, Office of Unemployment Insurance, conducted a detailed investigation into the circumstances under which *Physics Today* fired me, and found no evidence of even simple misconduct on my part, leaving my workplace activism as the more obvious explanation for my firing. The state awarded me full unemployment benefits. The company, lacking any real evidence to back its claim, did not appeal. Inconveniently, for 19 years they had given me raises and promotions based explicitly on close scrutiny of the quantity and quality of my work (they invariably said that I met or exceeded the job requirements), and at the time they fired me, I was two months ahead in my work, having just fulfilled my entire annual review-period work quota in the first 10 months of the period, and I had a thick file of praise for my work — from both management and outsiders.

S 000643

I did write a book — *Disciplined Minds* (Rowman & Littlefield, 2000) — but on my own time. I am sure the company didn't like the book, in part because it presents a new argument in favor of affirmative action. The company's phony charge of misconduct was based on its opportunistic interpretation of dramatic writing in the book itself (a nod to Abbie Hoffman's 1971 classic, *Steal This Book*). Instead of simply ignoring the book, management chose to make the most extreme interpretation possible of writing in it set years ago in another city. It is very telling that despite my 19 years of service to *Physics Today*, my supervisors did not ask me even a single question about the book, or about anything else, before dismissing me. They were looking for an opportunity to get rid of me.

The company apparently thought the book looked so radical that no one would defend me. But that hasn't been the case. In addition to the Maryland Department of Labor finding, there have been many protests, including protests by sixteen former *Physics Today* staff members and by the National Writers Union.

What the company won't tell you is that they were out to silence me, and that firing me was the culmination of an escalating series of very repressive measures that they took to stop me from speaking out on discrimination and other workplace issues. Those measures included inaccurate, unfair and punitive 1998 and 1999 performance reviews, a gag order on me, a ban on private conversations between me and my coworkers, and a witch hunt that frightened coworkers who worked with me on workplace issues.

Physics Today management turned against me permanently at the beginning of 1997, when I made an issue of the magazine's discriminatory employment practices in a sharp way. In direct response to that, during my next annual performance review, management went back and criticized me strongly for behavior during the year prior to the one under review. (That behavior included raising the issues of the lack of diversity and lack of pay equity at *Physics Today*.) From then on, *Physics Today* subjected me to a kind of cumulative rating system in which my standing in the eyes of management was lowered by all of my past perceived misbehavior, no matter how long past. Nothing was forgotten, and every criticism of me by management was the occasion for explicit references to earlier activism. Management seemed set to welcome any opportunity to fire me.

During my 1999 performance review (8.5 months before I was fired), management criticized me harshly for circulating to the staff a memo that I wrote to management covering a number of workplace issues, the biggest of which, by far, was *Physics Today*'s discriminatory hiring practices.

I am enclosing a chronological list of some relevant events, along with some documents referred to in the list, and other information. I can provide much more information and much more detail on the enclosed information; just let me know what you need.

Please cross file my complaint with the U.S. Equal Employment Opportunity Commission.

Thank you for your action in this matter.

Sincerely,

Jeff Schmitt

S 000644

Contact information

Jeff Schmidt
3003 Van Ness Street NW #W406
Washington, DC 20008-4824

202-537-3645
jeff-schmidt@juno.com

DOB: [REDACTED]

SSN: [REDACTED]

Physics Today
American Institute of Physics
One Physics Ellipse
College Park, MD 20740
301-209-3100

The *Physics Today* staff member with whom I worked most closely on the discrimination issue was Jean Kumagai. She was based in New York City and was the only minority group member on the *Physics Today* staff. She resigned from *Physics Today* on 24 November 1999, in part because of the magazine's discriminatory employment practices. Unlike current *Physics Today* employees, she can speak freely. Here is her contact information:

Jean A. Kumagai
152 Bedford Avenue #2R
Brooklyn, NY 11211-2066

212-419-7551 (w)
718-387-4943 (h)
jak@interport.net

Science & Government Report

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S 000646



A STAPLE OF ANIMAL RESEARCH PROTECTIONS IS COMING SOON TO HUMAN CLINICAL TRIALS

As the academic medical establishment looks to shore up its overburdened and leaky programs for protecting the human subjects of research, they're turning to a model that's long been employed in research using animals: accreditation.

A bipartisan House bill introduced June 8 with the blessing of the academic medical establishment would mandate the establishment of a government-sanctioned accreditation program for institutional human subjects protections within two years. A tiny Boston-based nonprofit called Public Responsibility in Medicine and Research (PRIM&R) has been working on such an accreditation program for more than a year, and is likely to be the entity that's given the job.

With encouragement—but no funding so far—from the National Institutes of Health and the Food and Drug Administration, PRIM&R is now nearing completion of a set of professional standards for research involving human subjects, says Executive Director Joan Rachlin. The 28-year-old organization has long provided educational programs for institutional review boards (IRBs)—the panels of scientists and others that review clinical research protocols to ensure the protection of their human subjects. PRIM&R recently formed a new paper entity, called the Association for the Accreditation of Human Research Protection Programs.

(Continued on p. 2)

SCIENCE POLICY ISSUES AREN'T TOPPING BUSH'S CAMPAIGN PRIORITIES

While the battle for the White House is well underway, the campaign of George W. Bush has just begun work on its science and technology policy, say two House Science Committee veterans who are helping out.

Bob Walker, the former chairman of the science panel, and self-styled advisor to the campaign, says he was assured by Bush long ago that the Texas governor is fully committed to basic science. Walker, now chairman of the Wechsler Group, a Washington lobbying firm, told a panel during a recent American Geophysical Union meeting that more work needs to be done on the specifics of Bush's policy, and sought input from the audience of physicists.

Rep. Vernon Ehlers (R-MI) is heading a team that is recruiting scientists to provide advice on the campaign, and has submitted a draft policy statement for the campaign's review. In an interview, Ehlers said Bush told him

(Continued on p. 2)

that such a safety margin is excessive, but others might argue that it's too conservative and we don't have enough protection.

SGR. *Has it been determined that the 5% annual spending level is the optimal level to provide this long-term security?*

Cech. Yes. We've undertaken a strategic planning program where we have included a large number of financial projections as well as programmatic evaluations. We're about two-thirds of the way done with that process. As soon as you do these financial projections you realize that if you change the market projections a little bit, the five-year downstream effect is rather different. One of the decisions we've made is if the market continues the way it is, we are going to be announcing major new programs and major new spending initiatives almost annually over the next several years. That would be good news; we'd enjoy being able to do that.

SGR. *Will these major initiatives you speak of still have to fall within this 5% disbursement cap?*

Cech. Not necessarily. We may have to adjust the 5% and it may have to be adjusted upward if we find ourselves sitting on a \$20 billion endowment in a few years. At that point, we are not going to be limited to the 5%. The endowment has grown a lot and if it would shrink a bit for a temporary time it might make the president of HHMI a little nervous but it might be the right thing to do for awhile. We have to have our plan set, but we also are going to have to retain flexibility to respond on an annual basis, to recalibrate a bit.

SGR. *Is there a role for HHMI and other charitable providers to fund research in politically sensitive areas, for example that involving embryonic stem cells?*

Cech. There have been announcements, by the Juvenile Diabetes Foundation, for example, which is funding such research. As you know it is legal, but the derivation of stem cells is not allowable with NIH funding. If you want to get into that topic of discussion *vis a vis* HHMI, Bob Potter, our communications officer, is the one who is handling inquiries about embryonic stem cell research. We want to make sure to give a consistent response. It's a sensitive enough area that we want to give a very uniform and consistent view.

SGR. *So sensitive that the president feels uncomfortable about talking about it?*

Cech. The president likes to talk, and is still growing into the job from having been a scientist and teacher, both professions where one tends to talk a lot. Now that I'm representing HHMI, a little more care has to be taken to be sure that exactly the right words are being said.

SGR. *There are some new MROs starting up—in particular the Van Andel Research Institute and the Stowers Institute. Is there a need to coordinate what all these MROs are doing to ensure that duplication isn't occurring?*

Cech. There certainly is interest in the nonprofit community to have more communication so one can get cooperation, collaboration, some of the economy that might come

from doing things together rather than duplication of effort in some areas. And that needs to be balanced against what is the real strength of the nonprofit community, which is the diversity of approaches. The beauty of the nonprofit world is that when it's operating at its best, it can be more experimental, more risk-taking, more focused on issues of particular interest to the donors to that particular nonprofit. Yes, more communication to avoid unnecessary duplication is a good thing, but uniformity would be a bad thing. Then you'd be in the terrible situation where all of the nonprofits together, with an annual budget of only a few percent of the NIH annual budget, wouldn't have an exciting impact on the system. If they were just adding incrementally a few percent more research dollars, then if they all dried up and blew away there wouldn't be much of a negative impact.

The other neat thing about the Van Andel and Stowers institutes is that they are making a regional impact in areas where they now provide a regional medical center. They're adding a lot of vitality to Kansas City and Grand Rapids, MI. You can argue that research can be done at just a few major places. But as soon as you start thinking about the fact that there is going to be public outreach and all kinds of educational spinoffs from the research program, then it's pretty exciting to have some of these MROs operating in places like this. Is there a limit to how many MROs can operate efficiently? Maybe it would be good to have some more regional ones in places that are not the traditional powerhouses of biomedical research. Maybe that will have a very special type of impact, which would not be duplicated by simply adding additional dollars to Harvard Medical School or Stanford.

NONPROFIT PAYCHECKS: THE AMERICAN INSTITUTE OF PHYSICS

A glance at the financials of the American Institute of Physics, the umbrella organization of 10 societies representing 120,000 physicists and students, shows an organization that has nearly doubled its wealth over the past few years, with net assets exceeding \$80 million at the end of 1998.

AIP's "excess"—what the commercial world calls profit—also has risen exponentially in recent years. In 1998, the most recent year for which a return on Form 990 is available, AIP reported an excess of \$12.5 million, on revenues of \$76.8 million. In 1996, the surplus was only \$7.8 million, and the year before that, \$3.5 million.

Like many other scientific nonprofits, the bulk of AIP's revenues come from its publishing operations. Subscriptions to AIP's own journals, which include such titles as *Applied Physics Letters*, *Journal of Applied Physics*, *Journal of Chemical Physics*, and *Journal of Mathematical Physics*, and to those of its member societies, such as the American Physical Society's *Physical Review* and *Physical Review Letters*, brought in \$46.6 million in 1998. Advertising in

AIP's four magazines, which include the monthly *Physics Today* sent to all members of the constituent societies, raised another \$5 million.

Marc H. Brodsky, AIP's executive director and CEO since 1993, was paid \$246,300, plus benefits of \$28,226. That's up considerably from the \$217,931 and \$27,353 he took in during 1997, but it's still at the low end of the range of pay for the chiefs of scientific societies. Richard Nicholson, executive officer of the American Association for the Advancement of Science, made \$346,407, plus \$30,774 in benefits, during 1998, although AAAS's revenues were smaller than AIP's, at \$64.6 million. And Raymond Fowler, executive director of the American Psychological Association, was paid \$229,515, plus \$127,202 in benefits, for an operation with \$76.7 million in revenues—and which operated at a small deficit that year. No one, however, comes close to the \$605,398, plus \$36,510 in benefits that went in 1997 to American Chemical Society Executive Director John Crum, who commands an operation with revenues well over \$300 million.

Number two on the AIP pay list was Darlene Walters, vice president of AIP's publishing empire. She made \$234,936 in 1998, plus benefits of \$33,064. In 1997 she was earning \$204,346 and benefits of \$31,613.

Other officers who were paid were:

James H. Stith, director of the physics program, \$133,256 and \$12,238.

Richard Baccante, treasurer and chief financial officer, \$151,044, \$26,415. Also listed for Baccante were expenses of \$24,412.

Theresa Braun, director of human resources, \$131,254, \$20,230.

Roderick M. Grant, secretary, listed as working on an "as needed" basis, \$55,279, \$4,334.

AIP's part-time directors served without pay, benefits, or expense account.

Listed as the highest-paid employees other than officers, directors, and trustees were the following, their pay and benefits:

James Donohue, publishing services director, \$147,315, \$29,743.

Margaret Judd, information technology director, \$146,346, \$26,629.

Richard Kobel, advertising/exhibits director, \$120,183, \$21,736.

Timothy Ingoldsby, product development director, \$115,000, \$23,862.

John Scott, journal publisher, \$121,507, \$6,010.

In addition, 106 other employees, from a staff numbering 590, were paid more than \$50,000.

AIP's two largest components are the American Physical Society, with about 40,000 members, and the American Geophysical Union, with 31,800. Smaller constituents are the Optical Society of America, 11,600; Acoustical Society of America, 7,200; American Association of Physics Teach-

ers, 11,600; American Astronomical Society, 6,100; American Vacuum Society, 6,000; American Association of Physicists in Medicine, 4,300; American Crystallographic Association, 2,300; and Society of Rheology, 1,800.

Previous Paychecks In This Series

(2000): National Public Radio, June 1; Federation of American Societies for Experimental Biology, May 15; American Enterprise Institute, May 1; Biotechnology Industry Organization, April 15; University of California-operated national laboratories, April 1; American Medical Association, March 15; Association of American Universities, March 1; Heritage Foundation, February 15; American Council on Education, February 1; MITRE Corp., January 15.

(1999): American Psychiatric Association, December 15; American Association for the Advancement of Science, December 1; Association of American Medical Colleges, November 15; American Psychological Association, November 1; American Chemical Society, October 15; Howard Hughes Medical Institute, October 1; National Academy of Sciences, September 15; Massachusetts Medical Society, August 15; Cato Institute, July 15; Hudson Institute, June 15; RAND, June 1; National Education Association, May 15; American Institute of Aeronautics and Astronautics, May 1; American Cancer Society, April 15; American Heart Association, April 1; Institute of Electrical and Electronics Engineers, March 15; Center for Science in the Public Interest, March 1; American Institute of Biological Sciences, February 15; UC-operated national labs, February 1; American Geophysical Union, January 15.

JOB CHANGES & APPOINTMENTS

Rear Adm. Jay M. Cohen has been appointed the chief of naval research, succeeding Rear Adm. Paul Gaffney. Cohen, who most recently has headed the Navy's Y2K office, is a Naval Academy grad with a master's degree in marine engineering and naval architecture from MIT and an extensive background in submarines. Like Gaffney, Cohen will be triple hatted, holding the additional titles of director of test and evaluation and technology requirements in the office of the chief of naval operations, as well as deputy commandant for science and technology for the Marine Corps. No word at press time whether Gaffney would take a new command or retire to pursue interests in the private sector.

E. Greg Koski, an MD-PhD and director of human research affairs for Partners HealthCare System Inc., the consortium of hospitals affiliated with Harvard Medical School, has been named to direct the Office of Human Research Protection, the newly formed entity within the Department of Health and Human Services that replaces the defunct Office of Protection from Research Risks (OPRR) at the National Institutes of Health. Koski, who will formally assume

PHYSICS TODAY MAGAZINE WORKPLACE CHRONOLOGY

1980

Jeff Schmidt graduates in physics from the University of California, Irvine, and registers with the American Institute of Physics job placement service.

Early 1981

Physics Today Editor Harold L. Davis invites Schmidt to apply for a job at the magazine.

Late February 1981

Physics Today brings Schmidt from California to New York for an interview. American Institute of Physics associate director for publishing, Robert H. Marks, promises that Schmidt can go far by staying with AIP.

17 March 1981

Schmidt begins work at *Physics Today*, at the magazine's offices in the headquarters building of the American Institute of Physics, in New York City (Manhattan).

Within a year after beginning work

Management gives Schmidt a booklet that begins, "Welcome to the staff of the American Institute of Physics." The booklet gives examples of "an employee's own time": "meal periods, scheduled breaks, and time before or after a shift."

[American Institute of Physics Employee's Handbook, January 1982, page 16]

1981–2000

Bertram M. Schwarzschild, whose timeline of employment at *Physics Today* almost exactly parallels Schmidt's, openly spends company time on personal activities (rehearsing lines for plays, making personal telephone calls, debating topics at length with coworkers, writing fiction on his office computer, sending personal e-mail, surfing the Web, playing computer solitaire and so on), but is never fired. Schwarzschild's submissive attitude toward management and open seething with irrational prejudices against minorities, women, gays and so on contrasts sharply with Schmidt's attitude and behavior.

1981–2000, most years

Schmidt is given bonuses for perfect attendance.

1981–2000

Schmidt's work is praised by the authors of the articles he edits. Many of the authors are prominent physicists.

[Various letters]

1981–2000

Schmidt does work beyond that required by his job description. For example, he helps coworkers who write news stories and he researches possible feature article topics, proposes the articles at meetings and solicits them.

[Example: agenda for 20 January 2000 articles meeting]

24 August 1983

D. Allan Bromley, the Yale University nuclear physicist and member of the White House Science Council who later became President George Bush's science advisor, praises Schmidt's editorial work on Bromley's *Physics Today* feature article. Bromley writes to *Physics Today* Editor Harold L. Davis: "I must tell you that Jeff Schmidt did an absolutely outstanding job in editing the paper I had prepared on Neutrons in Science and Technology for presentation at the 40th Anniversary of Fermi's First Reactor at the University of Chicago. I made no changes whatsoever in what he had done. You really do not know how unusual that is because, almost inevitably, I end up having giant hassles with editors who work over my papers. Let me then put in a very strong plug for Jeff."

Around 1988

Many *Physics Today* staff members oppose the firing of secretary Ruth Viera by *Physics Today* Editor Gloria B. Lubkin. Speaking for the spirit of the concerned staff, Schmidt protests to Lubkin, who drove Viera to a kind of nervous breakdown. Against Lubkin's wishes, Schmidt and many coworkers meet with Viera in the days after her firing.

27 March 1991

Schmidt is promoted from Associate Editor Level I to Associate Editor Level II based on the quantity and quality of his work.

27 July 1993

Schmidt is promoted from Associate Editor Level II to Senior Associate Editor based explicitly on the quantity and quality of his work.

[Document dated 17 February 1993; memorandum dated 27 July 1993]

October 1993

Physics Today moves from New York City to College Park, Maryland. The company moves Schmidt from New York City to Washington, D.C., on 1 November 1993.

20 December 1993

Stephen G. Benka starts work at *Physics Today* as an associate editor, a non-management position. Nine months later he is appointed Editor of *Physics Today*.

4 January 1994

Denis Cioffi and Ray Ladbury begin work as editors at *Physics Today*.

22 or 24 February 1994

Charles Harris begins work as publisher of *Physics Today*, a newly created position higher than Editor.

1994

Physics Today publisher Charles Harris authorizes Schmidt to work at home, in Washington, D.C., one day per week.

24 October 1994

S 000650

Physics Today managing editor Kenneth J. McNaughton pursues a personal 200-page journal editing project in part on office time and sends by Federal Express at company expense a heavy package associated with that project.

[Cover letter dated 22 October 1994 and sent 24 October 1994 from McNaughton to Ablex Publishing Corporation; Ken McNaughton, guest editor, *Creativity Research Journal*, Volume 7, numbers 3 and 4, 1994]

Beginning around 1995

Physics Today Editor Stephen G. Benka behaves abusively toward individual staff members, repeatedly blowing up at them, yelling at them. In one incident, Benka angrily follows *Physics Today* staff member Graham Collins out of the office, out of the building and into the parking lot.

Around 1995 to 2000

The American Institute of Physics recognizes that newly appointed *Physics Today* Editor Stephen G. Benka is deficient as a manager and requires him to attend management training classes over a long period of time.

1995–2000

Physics Today Editor Stephen G. Benka praises Schmidt's work repeatedly.

[Various documents]

25 May 1995

Schmidt tells Benka that Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem that limits the number of articles Schmidt can edit per year.

[25 May 1995 memorandum from Schmidt to Benka]

26 May 1995

Schmidt notes that Benka provided him with no work for an entire week (23 May 1995 to 30 May 1995) and that this is the third time in the past 11 weeks that Benka has let Schmidt run out of work.

[Note of 26 May 1995]

Around 8 March 1996

Physics Today publisher Charles Harris meets with Schmidt to discuss management's draft review of Schmidt's job performance. Harris decides to raise Schmidt's job performance rating from "Meets Job Requirements" to "Exceeds Job Requirements." Harris notes in a tone of regret that this change will make it harder for the company to get rid of Schmidt. Schmidt asks what Harris means. Harris explains that should the company decide to get rid of Schmidt, it would now take at least a year longer to do so, because it can't credibly lower its view of an employee's performance abruptly. (Harris says nothing to suggest that he plans to shift from the carrot to the stick in dealing with Schmidt.)

14 March 1996

Schmidt's 1996 performance review says he edited 16 articles and gives him a rating of "Exceeds

Job Requirements.”

The review says, “His comments in meetings often provide a useful counterpoint to discussions,” and “His comments and views on editorial ideas and policies, while sometimes contrarian, are generally insightful.”

[Performance review dated 12 March 1996]

11 July 1996

American Institute of Physics personnel office employee Melinda Underwood informs personnel director Theresa C. Braun that in 1995, AIP employment was deficient at the following levels and in the following ways:

- Senior managers (101): Female and minority underutilization
- Senior professionals (201): Female underutilization
- Other professionals (202): Minority underutilization

[11 July 1996 memo from Underwood to Braun]

22 July 1996

Schmidt is short of work because *Physics Today* Editor Stephen G. Benka has failed to solicit sufficient articles for the magazine. Schmidt writes a note to Benka asking for work.

[Note of 22 July 1996]

4 October 1996

The only minority on the *Physics Today* staff is also the most underpaid employee. On behalf of staff members who have been pushing for pay equity at *Physics Today*, Schmidt tells the *Physics Today* advisory committee, at their annual meeting, that the large salary differentials among the staff are not only unfair, but also divisive and bad for morale and productivity. Schmidt raised this issue at various staff meetings as well. Management is not pleased by the pressure, in part because it forces them to give the minority employee, Jean A. Kumagai, a special 25% salary increase, beginning on 1 June 1997.

15 November 1996

The *Physics Today* advisory committee issues a report strongly critical of working conditions at the magazine.

[Committee report e-mailed to staff by Benka 15 November 1996]

15 November 1996

Schmidt and some coworkers, after discussions with many more coworkers, give *Physics Today* managers and staff a list of changes that they want made at the *Physics Today* workplace. They present their requests in the form of a proposed agenda for a two-day retreat scheduled for 19–20 November 1996. Fearing reprisals for making requests that might not please management, those involved do not disclose their names; however, the fact that Schmidt played a leading role is known to all. One item calls upon the company to change its hiring practices to “increase diversity of *Physics Today* staff.”

[Document of 15 November 1996]

17 November 1996

S 000652

In response to a request for greater job security by a group of concerned staff members, *Physics Today* Editor Stephen G. Benka promises the entire staff that job security will be based on job performance. This is a change from the magazine's previous policy of "at will" employment, in which employment could be terminated for any reason.

[Document of 15 November 1996; 17 November 1996 statement by Benka]

26 November 1996

Schmidt and Jean Kumagai get *Physics Today* Editor Stephen G. Benka to send the current job opening announcement to three minority group organizations.

27 November 1996

Schmidt and Jean Kumagai update the *Physics Today* staff on the status of affirmative action efforts related to the current job opening.

Beginning around 1996

Physics Today publisher Charles Harris makes it clear to Schmidt and to many other staff members that their concerted activities have infuriated him.

After late 1996

There is a turning point in management's attitude toward Schmidt, a distinct and permanent change in management's tactics in dealing with Schmidt, a shift from trying to incorporate Schmidt into the decision-making process to trying to exclude him, a shift from the carrot to the stick. *Physics Today* publisher Charles Harris is no more Mr. Nice Guy.

Management's anger at Schmidt increases dramatically, and never subsides, when he works with Jean Kumagai and other staff members to assert the need for equal opportunity and affirmative action in hiring at *Physics Today*, to increase staff diversity. They raise the issue when Ray Ladbury leaves the magazine in late 1996, creating an opening on the editorial staff. Schmidt speaks out strongly on the issue over a long period of time, as Ladbury's position isn't filled until 6 May 1997.

3 January 1997

Schmidt tells Benka that Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem that limits the number of articles Schmidt can edit per year.

[3 January 1997 note from Schmidt to Benka]

13 February 1997

Schmidt's 1997 performance review says, "He edited 15 feature articles in this period, one shy of his agreed upon goal of 16." Schmidt is given a rating of "Exceeds Job Requirements."

The review says, "His comments in meetings often provide a useful counterpoint to discussions," and "His comments and views on editorial ideas and policies are generally insightful."

[Performance review dated 13 February 1997]

April 1997

S 000653

To fill the position vacated by Ray Ladbury, *Physics Today* brings in three applicants for interviews. All are white males: Charles Day, David Ehrenstein and Corby Hovis.

Around late April 1997 (after the three white males are interviewed)

Schmidt argues strongly at a staff meeting that promising minority applicants be interviewed for the open position. *Physics Today* publisher Charles Harris and Editor Stephen G. Benka say no.

6 May 1997

Physics Today Editor Stephen G. Benka announces that the magazine has hired Charles Day to fill the position vacated by Ray Ladbury.

Benka says that after filling the position, he phoned six "very promising" applicants, mainly members of minority groups, to tell them that he will consider them for future openings. Even though these minority applicants were "very promising," none of them were brought in for interviews.

[Benka's e-mail message of 6 May 1997]

2 June 1997

Charles Day, Ray Ladbury's replacement, begins work.

Around 25 July 1997

Schmidt begins working at home, in Washington, D.C., three or four days per week.

18 August 1997

Schmidt writes to Benka about the chronic shortage of work (articles to edit). He asks Benka for more articles to edit. (Benka responds defensively, as providing the work is his job.)

[Memos of 18 August 1997, 19 August 1997, 25 August 1997, 2 September 1997]

19 August 1997

Benka surreptitiously changes Schmidt's job description to make it look like Schmidt is partly responsible for providing the work that Benka is supposed to provide but has been deficient in providing.

25 August 1997

Schmidt discovers Benka's surreptitious change in Schmidt's job description and agrees to the change because it shifts Schmidt's work from an area in which Benka has been deficient in providing work to an area in which work is available. Schmidt makes Benka write a note saying that Schmidt's job description has been changed. The new job description changes Schmidt's article editing quota from 16 per year to 14 per year.

[Note of 25 August 1997]

25 September 1997

Near the beginning of a staff retreat, Schmidt asks if staff members may ask questions. *Physics Today* publisher Charles Harris says no. Schmidt argues that staff members *should* be allowed to ask questions at a retreat. Harris angrily shouts "No, That's an order!", ending the discussion.

At the retreat itself, and in subsequent weeks, a number of Schmidt's coworkers publicly criticize Harris for the way in which he shut Schmidt up. A number of staff members — Graham Collins, for example — consider resigning.

Some days after the retreat, Harris tells Schmidt that he thought Schmidt's request for the right to ask questions was a disguised attempt to raise issues of staff concern.

1 October 1997

Gag order put on Schmidt. *Physics Today* publisher Charles Harris and Editor Stephen G. Benka hand Schmidt a written "notice" that implies that Schmidt will be fired the next time he says anything that management considers to be "counterproductive." The notice also orders Schmidt not to tell his coworkers that he is under this restriction.

[Document dated 26 September 1997.]

15 October 1997

In a written statement to the *Physics Today* staff, publisher Charles Harris says that "the staff should be free to engage in constructive criticism and discussion without fear of retribution" and promises that "while we can't guarantee life employment,... continued employment is based on satisfactory performance."

[Statement of 15 October 1997]

17 October 1997

Schmidt and a group of coworkers, in a written grievance presented to the *Physics Today* advisory committee at its annual meeting on 17 October 1997, ask for relief from "the increasingly repressive work environment at the magazine." The appeal describes how *Physics Today* staff members Jeff Schmidt and Graham Collins have been warned about speaking up about workplace problems. It says, "Both Jeff and Graham have been outspoken about problems that many of us see at the magazine. We feel that the [gag orders on them] contribute to a repressive atmosphere at the magazine and restrict all of us."

Schmidt meets with the committee privately and, on behalf of concerned *Physics Today* employees, objects to the magazine's discriminatory employment practices and failure to live up to its claim that it is an affirmative action employer.

In the weeks and months following 17 October 1997

Physics Today publisher Charles Harris harshly criticizes Schmidt for his leading role in the presentation of staff concerns to the *Physics Today* advisory committee on 17 October 1997, telling Schmidt and others incorrectly that Schmidt tried to get him fired. Harris makes it clear that he sees Schmidt's actions as an unforgivable offense that obligates Harris as a matter of manly honor to fire Schmidt or eventually drive him out and that gives Harris the moral right to do that by any means.

24 October 1997

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky, Schmidt's boss's boss's boss's boss, accuses Schmidt of making "a very, very serious charge" about *Physics Today*'s hiring practices. Brodsky demands that Schmidt bring him the evidence.

[Extensive notes available.]

24 October 1997

Gag order put on Graham Collins. *Physics Today* management lets staff know that problems are to be discussed with managers on an individual basis only. This is communicated to the staff through a warning to Graham Collins and in other ways.

Collins sends an e-mail message to the non-management *Physics Today* staff with the subject line: "My coming silence."

[24 October 1997 e-mail from Collins]

4 November 1997

Schmidt and Jean Kumagai work together to prepare the document on equal employment opportunity and affirmative action that Schmidt will give to American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky on 5 November 1997.

[4 November 1997 e-mail from Kumagai to Schmidt]

5 November 1997

Schmidt meets with American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky for one hour and gives Brodsky a written statement summarizing *Physics Today*'s discriminatory hiring practices and lack of promised affirmative action.

[Two-page document dated 5 November 1997; extensive notes from meeting available]

Schmidt tells Brodsky that AIP failed to conduct the equal employment opportunity and affirmative action training that it promised the federal government it would conduct. AIP made that promise in its 284-page "1996 Affirmative Action Program for American Institute of Physics," a document signed by Brodsky and filed with the federal government at the government's request.

[Pages 44–45 of the 284-page document (Schmidt's page numbering)]

Brodsky counters by saying that he is pretty sure that he mentioned affirmative action either at the one-hour question-and-answer session that he held at AIP headquarters on 20 June 1996 or at the Q&A meeting that he conducted for employees at AIP's facility in Woodbury, New York. He indicates that this mention (which, in fact, did not occur at the headquarters meeting) was the promised equal employment opportunity and affirmative action "training."

Brodsky promises to look into affirmative action at *Physics Today* and tell Schmidt what he finds.

7 November 1997

Schmidt suggests that American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky speak with *Physics Today* staff member Jean Kumagai about discrimination and affirmative action at the magazine. Kumagai, the only member of a minority group at *Physics Today*, has been concerned about the issue and has been working on it. Brodsky fails to contact Kumagai.

[7 November 1997 e-mail message from Schmidt to Brodsky]

S 000656

Around 13 November 1997

Coworkers force management to rescind the gag orders on Schmidt and Graham Collins. The gag orders had outraged many coworkers, most of whom were afraid to speak out on their concerns but valued Schmidt and Collins doing so for them. Many staff members openly criticized the gag orders, forcing *Physics Today* publisher Charles Harris, at the November 1997 monthly staff meeting, to agree to rescind them. Harris does so reluctantly and without any decrease in his anger toward Schmidt and Collins.

[E-mail message of 1 December 1997.]

2 December 1997

Management rescinds the gag orders on Schmidt and Graham Collins.

[E-mail messages of 2 December 1997.]

19 January 1998 — Martin Luther King holiday

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky tells Schmidt that he is still looking into the equal employment opportunity and affirmative action issues that Schmidt raised. Schmidt answers on behalf of the concerned staff, saying, "We'll stay tuned."

[19 January 1998 e-mail messages between Brodsky and Schmidt]

22 January 1998

Schmidt appeals to *Physics Today* publisher Charles Harris for relief from the pressure to take on additional (clerical) work. Harris says he is not inclined to give Schmidt any consideration, because of Schmidt's and Graham Collins's previous-year organizing activity, which Harris says is a threat to Harris's own job.

[4 February 1998 letter from Schmidt to Collins]

28 January 1998

Physics Today Editor Stephen G. Benka breaks up two conversations between Schmidt and coworker Toni Feder after working hours.

Benka bans private conversations in the workplace, saying that all conversations between staff members must be open to monitoring by management.

When Schmidt asks Benka why, Benka refers to the organizing activity that took place the previous year and says he doesn't want that to happen again.

Management's disruptions of the two Schmidt/Feder conversations on 28 January 1998 and ban on future private conversations appear to be aimed specifically at Schmidt even though Benka says the rule applies to all employees.

[4 February 1998 letter from Schmidt to Collins]

Shortly after 28 January 1998

News of management's dislike of private conversations in the workplace spreads quickly throughout the staff (by way of private conversations) and puts a chill on everyone's expression.

Paul Elliott complains to *Physics Today* publisher Charles Harris about the ban on private conversations between staff members. Harris takes no action.

20 March 1998

American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky meets with Schmidt and tells Schmidt that Brodsky investigated *Physics Today*'s hiring practices and found that the magazine's affirmative action program was doing very well. Brodsky explains that he judges the program by its results. At the time, *Physics Today* has an all-white staff of 18 employees, with only one exception.

Schmidt asks Brodsky again (as he did on 5 November 1997) about the equal employment opportunity and affirmative action training that Brodsky promised the federal government that AIP would conduct. After extensive questioning by Schmidt, Brodsky says that his supposed mention of the issue at the Q&A meetings constituted only "part of" the promised training. Schmidt then asks Brodsky to do "the rest of the training." Brodsky very reluctantly promises to look into it, but such training is never conducted.

At the end of the meeting, Schmidt tells Brodsky that Schmidt and the other concerned *Physics Today* staff members still believe that their concerns about the lack of diversity in *Physics Today*'s hiring are well founded, and that the concerned staff are therefore disappointed with Brodsky's response. Brodsky's apparent view of the upshot of what happened is that Schmidt leveled totally unfounded charges at AIP, and Brodsky is not happy about that.

[Notes of 20 March 1998 meeting available]

20 March 1998

During Schmidt's meeting with American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky about staff concerns about discrimination and lack of affirmative action in hiring at *Physics Today*, Brodsky tells Schmidt that some of Schmidt's workplace activities, presumably reported to Brodsky by *Physics Today* publisher Charles Harris, are "counterproductive."

[Notes of 20 March 1998 meeting available]

24 March 1998

Schmidt meets with *Physics Today* Editor Stephen G. Benka to discuss his 1998 performance review. Benka condemns Schmidt's organizing activities at the magazine, focusing in particular on Schmidt's leading role in the concerted activity around the 19–20 November 1996 *Physics Today* retreat, even though that activity occurred before the period covered by the review. Part of that activity aimed at changing *Physics Today*'s hiring practices to "increase diversity of *Physics Today* staff."

Benka characterizes the staff actions in which Schmidt has played a leading role as nothing more than "disruptive." Benka says: "You have spent a lot of time in, shall we say, disruptive efforts."

This meeting is the first performance review discussion in which Benka criticizes Schmidt for his organizing activities around the 1996 retreat. Benka strongly condemns this 1996 concerted

activity, in which staff members anonymously proposed an agenda that addressed their concerns. Benka calls the group of staff members who did this “your cabal.” He calls them “people who wouldn’t step forward,” but he talks as if he has no doubt that Schmidt was not only one of them, but also a leading member. Referring to the group’s efforts to get its concerns discussed, Benka warns Schmidt: “Anything — any behavior that generates such feelings, such divisions, such divisiveness, such disruption among the staff — is not going to be tolerated anymore.”

Schmidt tells Benka that staff members fear reprisal for speaking out about workplace problems. Benka responds: “Now, why would they fear that? If they’re acting in good faith, then why would they fear it? But if they’re not acting in good faith, they may have reason. If they’re acting in order to engender divisiveness and trouble, if they’re acting in bad faith, they may have reason to fear.” Benka adds: “If they’re that afraid, maybe they should go where they’re less afraid — if it’s that unbearable.”

The performance review lowers Schmidt’s performance rating from “Exceeds Job Requirements” to “Meets Job Requirements” even though Schmidt did more work and more innovative work. The review makes what it admits are “new demands,” which amount to a sharp increase in Schmidt’s workload — from 14 feature articles per year to 18 — a 28 percent jump.

Schmidt: “I don’t know of any others who have been asked to increase the amount of work they do.”

Benka: “Oh yes they have” [repeats this a few more times].... I don’t know why it’s taken this long to ask you to increase as well.”

Schmidt asks Benka to make corrections in the review. After consulting with *Physics Today* publisher Charles Harris, Benka refuses to make any changes in the review.

In its employee handbook, the American Institute of Physics promises employees that their annual performance review will feature a discussion of “mutual goals.” Without explanation, Benka follows neither the letter nor the spirit of this policy, and doesn’t even pretend to be interested in what direction Schmidt might want to go in his work at AIP. The discussion is unlike anything Schmidt had experienced in previous years. Benka simply announces a big change in Schmidt’s job description — an increase in Schmidt’s workload by as much as three months’ worth of work per year — and discusses it as if he were a dictator giving orders. Rather than follow the participatory process promised in the employee handbook, management changes Schmidt’s job description by unilateral dictate, without discussion or agreement.

[Notes of 24 March 1998 meeting available]

24 April 1998

Schmidt’s fellow outspoken coworker Graham Collins leaves *Physics Today*. In explanation of the dissatisfaction that drove him to resign, Collins tells the American Institute of Physics that “Marc Brodsky [AIP executive director and chief executive officer] wishes to believe that the only problems are employees who complain too much.”

[Collins’s exit interview form, 24 April 1998]

27 April 1998

S 000659

Schmidt appeals his 1998 performance review to American Institute of Physics director of human resources Theresa C. Braun and director of physics programs James H. Stith. The appeal details some of the ways in which the review is inaccurate and explains how it is a reprisal for Schmidt's organizing activity and is part of a series of attempts to stop him from engaging in further concerted activity at *Physics Today*. The appeal puts greatest emphasis (more than 13 pages) on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. Schmidt shows his appeal to 12 coworkers.

[Document dated 27 April 1998]

30 April 1998

The American Institute of Physics formalizes its computer use policy, saying that it "makes its computer equipment available to employees for personal use" on a causal basis for non-commercial purposes such as "educational, recreational, hobby, and community service."

[18 June 1998 memorandum from Marc H. Brodsky to all AIP employees]

25 June 1998

Schmidt meets for two hours with American Institute of Physics director of physics programs James H. Stith about Schmidt's 1998 performance review appeal. Stith refuses to make any corrections at all in Schmidt's 1998 performance review.

Stith does not defend the review's criticisms of Schmidt, nor does he dispute Schmidt's detailed claim that the review makes many false statements about Schmidt. Stith says he decided to leave these statements in the review (and thus in Schmidt's permanent personnel record) because he had talked to *Physics Today* managers Charles Harris and Stephen G. Benka, who told him other things about Schmidt — things not mentioned in the review — and these things justified the lowering of Schmidt's job performance rating. Despite vigorous questioning by Schmidt, Stith refuses to say what these things are. However, Stith makes it clear that the problem is Schmidt's organizing activity, just as Schmidt had claimed in his appeal. Stith tells Schmidt that when you do things that your supervisors would be happier that you not do, then you have to be willing to pay the penalty, even if what you do is right. Schmidt responds that he expects Stith to protect people from being punished for doing the right thing. But Stith makes it clear that he will not play that appellate role at AIP. Stith says that in his younger days, he challenged the status quo. He says that even after the status quo yielded to change, he still had to pay a price for his actions, implying that paying such a price was right.

Schmidt appeals the ban on private conversations in the workplace to Stith. Stith tells Schmidt he knows about the ban, which was described in Schmidt's 27 April 1998 performance review appeal. Schmidt asks Stith to retract it. Stith promises to look into it, but never lifts the ban.

[Stith's memo of 24 June 1998; notes of 25 June 1998 meeting available]

20 August 1998

Schmidt meets with American Institute of Physics director of physics programs James H. Stith about Schmidt's 1998 performance review. Stith admits repeatedly that the performance review was "subjective," but he refuses to put that in writing.

[Notes of 20 August 1998 meeting available]

23 September 1998

Schmidt notes in an e-mail message to a coworker that *Physics Today* Editor Stephen G. Benka has failed to provide him with an adequate amount of work (articles to edit) and that this is a chronic problem.

[23 September 1998 e-mail message to coworker]

6 October 1998

Physics Today publisher Charles Harris, in a conversation with Schmidt, criticizes the management abilities of *Physics Today* Editor Stephen G. Benka and tells Schmidt that Harris is going to take away Benka's right to issue performance reviews and memos concerning personnel matters on his own. Harris will have to approve all such material before it is issued.

[6 October 1998 note written on memo of 1 October 1998]

Mid-December 1998 to mid-June 1999

Schmidt takes a six-month unpaid leave of absence.

Around 2 March 1999

Physics Today publisher Charles Harris is fired.

Mid-June 1999

Physics Today Editor Stephen G. Benka criticizes Schmidt harshly (and for the first time, even though it has been 14 months since it happened), for showing his 1998 performance review appeal to coworkers. That document reviews workplace issues, focusing most closely on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. Benka says, "You are lucky you still have your job after doing that."

29 June 1999

In response to the sharp increase in his workload imposed by management, Schmidt asks to work on a 2/3-time basis, writing in his request that "after all these years, at my age, I am not prepared to take on additional work."

[Memo of 29 June 1999]

9 August 1999

Benka tells Schmidt that his request to work 2/3 time has been approved and will take effect 20 September 1999.

17 August 1999

Schmidt is given an inaccurate and punitive 1999 performance review covering February 1998 to August 1999.

The review says, "During this review period, Jeff repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate and thereby undermining the editorial effort of *Physics Today*. Such behavior is unacceptable." An example of such behavior, according to the review, is Schmidt's showing coworkers his 1998 performance review appeal — the document that focuses most closely on the issue of discrimination in employment and lack of promised affirmative action at *Physics Today*. The 1999 review criticizes and punishes Schmidt

for this communication with coworkers. It says that such communication serves to "undermine...the staff's respect for management."

[Performance review dated 13 August 1999; Schmidt's 19 August 1999 comments on the review; Benka's 19 August 1999 response to Schmidt's comments]

19 August 1999

Schmidt meets with Benka about his 1999 performance review. Benka admonishes Schmidt for talking to coworkers about the punitive review, which Benka wanted to keep secret. Benka verbally demands that Schmidt tell him which coworkers Schmidt has spoken with about issues raised in Schmidt's 1999 performance review. Schmidt refuses. Benka insists. Schmidt says he will ask the coworkers for permission. (In an e-mail message later the same day, Benka says, "I still would like you to tell me which member or members of the staff you have discussed this year's review with.") Benka says he is concerned about Schmidt talking to coworkers because Schmidt has a lot of influence in the workplace. Soon after Benka's 19 August 1999 demands, Schmidt and coworkers confer and decide how to respond to Benka.

[Notes on 19 August 1999 meeting available]

26 August 1999

Schmidt reports to Benka that Schmidt and coworkers decided that Schmidt should not reveal any names to Benka or give Benka anything that Benka could use to try to identify which staff members are involved in private discussions. Schmidt and coworkers decided that Schmidt should give Benka only a verbal report on their views, based on notes that they agree on. Schmidt does that, but Benka then demands that Schmidt give him the notes, too. [Notes of 26 August 1999.] Schmidt refuses but agrees to consult again with coworkers. Schmidt and coworkers decide that Schmidt will give Benka a brief, agreed-upon written report, which Schmidt does.

Benka states his opposition to private conversations between staff members, saying that everything is in his domain. Schmidt, speaking on behalf of many staff members (those he consulted), defends private conversations.

[Notes on 26 August 1999 meeting available; memo dated 30 August 1999]

26 August 1999

Schmidt and Benka agree to change Schmidt's job description back to 80 percent article editing.

17 September 1999

Schmidt and the American Institute of Physics enter into an agreement specifying the amount of work Schmidt will do and what he will be paid in return for doing that work. The written agreement is approved by Schmidt and signed by a director of the American Institute of Physics (James H. Stith).

[Document dated 14 September 1999]

20 September 1999

Schmidt begins 2/3-time work with full benefits.

S 000662

24 November 1999

Jean Kumagai leaves *Physics Today*, in part because of *Physics Today*'s discriminatory practices and affirmative action hypocrisy. Kumagai was widely considered to be one of the best editors at the magazine. She was one of Schmidt's partners in concerted activity.

24 November 1999

Jean Kumagai's 24 November 1999 departure leaves *Physics Today* with an all-white professional staff (editors and writers) and an all-black staff of secretaries.

9–10 November 1999

Schmidt requests permission to either use his accumulated vacation time or carry it over to the year 2000; his request concerns only the amount of vacation time beyond the amount that is automatically carried over to the next year. (Verbal request 9 November 1999; written request 10 November 1999.) Management doesn't respond for a full month, giving vacation-use permission on 10 December 1999, which does not leave enough time in the year for Schmidt to plan and use all the vacation time. Management's response is partial, saying that the issue of carryover will be addressed later. After many written communications with Schmidt and two meetings with him over a period of a few months, management makes Schmidt forfeit much of his vacation time. Also, without Schmidt's knowledge and without notification, the amount of vacation time that he is allowed to carry over automatically (to the year 2000) is lowered to 175 hours from 262.5 hours the previous year; Schmidt discovers this after the fact, when he sees his earnings statement of 15 January 2000.

Schmidt's coworker Paul Elliott is in an identical situation and makes an identical request exactly one week after Schmidt's 10 November 1999 request. However, management allows Elliott to carry over to the year 2000 all of his unused vacation time — but makes him promise not to tell his coworkers.

After Schmidt is fired, he is paid for his remaining vacation time, which does not include his forfeited vacation time. He is paid for only two of the total of four "personal days" and "bonus days" due him.

[E-mail messages of 10 November 1999, 23 November 1999, 13 December 1999, 15 December 1999, 5 January 2000, 13 March 2000, 15 March 2000, 16 March 2000, 28 March 2000, 6 April 2000, 11 April 2000; note of 9 November 1999; memoranda dated 10 December 1999, 3 April 2000; notes of 15 March 2000 meeting with Nanna available, notes of 5 April 2000 meeting with Nanna and Benka available]

5 April 2000

Schmidt meets with *Physics Today* publisher Randolph A. Nanna and Editor Stephen G. Benka about vacation carryover. When Schmidt objects to AIP's decision to make him pay for AIP's admitted mistake, Nanna says, "And that's my opinion [too]. Would I like it done to me? Probably not."

[Notes of 5 April 2000 meeting]

5 April 2000

In the course of Schmidt's meeting with *Physics Today* publisher Randolph A. Nanna and Editor Stephen G. Benka about vacation carryover, Benka praises Schmidt's job performance in

glowing terms: "You're editing at a level that I find very good. At a level, frankly, I haven't seen from you before. It's terrific."

[Notes of 5 April 2000 meeting]

Around or just after mid-May 2000

Schmidt and coworker Toni Feder are talking alone in the *Physics Today* art office when *Physics Today* Editor Stephen G. Benka enters the room and points out to them that he noticed that they stopped talking when he showed up.

22 May 2000

Schmidt's immediate supervisor, *Physics Today* Editor Stephen G. Benka, learns of Schmidt's book, *Disciplined Minds*, when Benka comes upon a *Physics Today* staff member reading an article about it in the "Hot Type" column of the 26 May 2000 issue of the *Chronicle of Higher Education*.

30 May 2000

Historian Spencer Weart, director of the American Institute of Physics Center for History of Physics, reviews *Disciplined Minds* and sends his comments to Schmidt. Weart gives the book a very positive review and approves it for inclusion in the physics community section of the Niels Bohr Library, a specialized collection with limited space.

Schmidt distributes Weart's review to all *Physics Today* staff and management.

[30 May 2000 e-mail from Weart to Schmidt and 30 May 2000 e-mail from Schmidt to *Physics Today* staff and management]

Around 31 May 2000

Schmidt fulfills his entire annual review-period work quota in the first 10 months of the period. That is, he is two months ahead in his work.

31 May 2000, morning

Physics Today fires Schmidt.

31 May 2000, afternoon

Physics Today Editor Stephen G. Benka goes from office to office at *Physics Today*, telling each staff member that American Institute of Physics executive director and chief executive officer Marc H. Brodsky authorized him to say why Schmidt was fired. Benka tells people that Schmidt was fired for doing something other than what he was paid to do.

9 June 2000

The *Chronicle of Higher Education* reports *Physics Today*'s firing of Schmidt.

9 June 2000

Schmidt's long-time *Physics Today* coworker Bert Schwarzschild, in a telephone call to Schmidt, details Schwarzschild's use of office time and details his annual workload. The amount of break time Schwarzschild takes is very much greater than the two 15-minute breaks specified in the employee handbook, and his annual workload is significantly less than Schmidt's, because

management counts his short “picture caption” stories as “big-ticket items.”
[Notes available]

12 June 2000

The National Writers Union protests *Physics Today*’s firing of Schmidt.
[Union press release of 12 June 2000]

15 June 2000

Journalist Marlowe Hood, a former *Physics Today* staff member who was involved in concerted workplace activity with Schmidt, protests the firing of Schmidt.

Before 16 June 2000

Physics Today charges Schmidt with misconduct, telling the State of Maryland Department of Labor, Office of Unemployment Insurance, that “The employee admittedly used company time to work on a personal project over an extended period of time.”

16 or 19 June 2000

Physics Today tells Maryland Department of Labor, Office of Unemployment Insurance, claim examiner Tasha Owens, as evidence that Schmidt was writing the book on company time, that Schmidt had asked for reduced hours.

20 June 2000

Regarding Schmidt’s request to work reduced hours, state examiner Owens tells Schmidt that the company “did not specify why you needed that time.” According to the company, said Owens, “you didn’t say what it was for; you just asked for reduced hours. And that they granted you the request.” Owens tells Schmidt that the company “could not say what hours you spent doing the book. They don’t know.”

21 June 2000

Sixteen former *Physics Today* staff members, including many who were involved in concerted workplace activity with Schmidt, protest the firing of Schmidt.

24 June 2000

Princeton University physicist M. V. Ramana protests *Physics Today*’s firing of Schmidt.

26 June 2000

Physicist Kajoli Krishnan protests *Physics Today*’s firing of Schmidt.

26 June 2000

George Washington University management professor Denis Cioffi, a former *Physics Today* staff member who was involved in concerted workplace activity with Schmidt, protests firing of Schmidt.

26 June 2000

George Washington University expert systems professor Thomas Nagy protests firing of Schmidt.

26 June 2000

State of Maryland Department of Labor, Unemployment Office, issues its determination, finding no evidence that Schmidt engaged in even simple misconduct on the job by writing *Disciplined Minds*. The state awards Schmidt full benefits, retroactive to 4 June 2000. *Physics Today* does not appeal the state's finding.

28 June 2000

Physicist Vikram Vyas protests *Physics Today's* firing of Schmidt.

30 June 2000

Physicist Surendra Gadekar protests *Physics Today's* firing of Schmidt.

5 July 2000

Chris Garlock, editor of the online newsletter of the Washington, D.C., local of the National Writers Union, notes that physicist Albert Einstein wrote the theory of relativity in part during his spare time at the Swiss patent office, where he was employed.

STATE REJECTS *PHYSICS TODAY*'S CHARGE OF EMPLOYEE MISCONDUCT

The State of Maryland Department of Labor conducted a surprisingly detailed investigation into the circumstances under which *Physics Today* fired me. On 26 June 2000 the department issued its "determination," rejecting the magazine's claim that I engaged in misconduct on the job by writing *Disciplined Minds*.

The investigation was prompted by my request for unemployment benefits, because eligibility for such benefits is limited to people who lose their jobs "through no fault of their own." Thus, if you quit your job or are fired for misconduct, you may not be entitled to benefits.

An unemployment office examiner explained to me that "Some employers send us information and indicate that they do not wish to dispute the claim." Such a statement paves the way for the employee to get benefits. *Physics Today* didn't do that. Instead, the magazine sought a ruling in its favor, which would not only punish me further and save the magazine money, but also give the magazine political support in the form of third-party validation of its action against me. Thus, *Physics Today* charged me with misconduct, telling the state that "The employee admittedly used company time to work on a personal project over an extended period of time." This made an investigation necessary so that the state could determine independently whether or not I engaged in misconduct.

The centerpiece of the investigation was a hearing that took the better part of an hour, during which I offered a very different theory of why the magazine fired me. I said that *Physics Today* fired me for political reasons — specifically, management didn't like the radical content of the book and was looking for an excuse to get rid of me because of my workplace activism.

Department of Labor examiner Tasha Owens conducted the hearing by telephone. I waived my right to representation, figuring that I could present the facts as well as anyone. Owens interviewed me first, for 28 minutes. To test the company's claim, she asked me questions about how much time at the office I spent writing the book. (Answer: Break time.) To test my claim, she asked me questions about whether or not the company ever asked me how much time at the office I spent writing the book. (Answer: No, they didn't seem to care about that.) At the end of the interview, she scheduled me for a follow-up interview to give me the opportunity to rebut points that *Physics Today* would make in its interview.

However, Owens didn't call at the appointed time, and so I called her and asked why. She said, "There was nothing to rebut." Interestingly, *Physics Today* and I agreed about what I did, and disagreed only about whether or not my actions constituted misconduct. AIP, she said, "gave me the same information that you gave me."

Having gathered the facts, Owens had to make a decision. According to Susan R. Bass, an administrator in the office of the executive director of Maryland's unemployment insurance program, Owens had three levels of employee misconduct to choose from:

o Simple misconduct — Here the fired employee gets “delayed benefits,” which begin after a five to ten week waiting period.

o Gross misconduct — No benefits.

o Aggravated misconduct — No benefits, and reduced eligibility for benefits following subsequent employment.

Owens ruled that my work on the book didn’t even rise to the level of simple misconduct, and so she awarded me full benefits, retroactive to 4 June 2000. I will receive up to \$6,500, which the American Institute of Physics, the magazine’s publisher, will pay for through increased unemployment insurance premiums.

Physics Today was given the opportunity to appeal the state’s finding, but did not do so. If *Physics Today* sincerely believed its own story that it fired me for real misconduct on the job, and not just for political misconduct, it could have — and I think would have — appealed. The magazine would have appealed not only to save thousands of dollars, but also to dispel the implication that its motives for firing me weren’t squeaky clean.

The hearing was a high-anxiety event because a lot was at stake, both monetarily and politically. Strangely, however, it was also fun, because it was so different from the way I was used to seeing disagreements resolved in the *Physics Today* workplace, where power so often trumps reason (see appendix below for an example). It was a pleasure to speak the truth outside of that repressive hierarchy; the favorable decision was just icing on the cake. The ruling means that *Physics Today* fired me for a reason other than “misconduct in connection with the work.” Who will see that reason as anything other than political misconduct? *Physics Today* now has to consider the possibility that both the hearing and the third-party perception of its behavior are previews of future events.

S 000668

Appendix — Example: Affirmative action

There are countless examples of power trumping reason in the *Physics Today* workplace, and I will summarize just one here.

Beginning a few years ago, I worked with Jean Kumagai and other *Physics Today* staff members to get the magazine to live up to its claim that it is an affirmative action employer. After many months of being largely ignored, we decided to raise the issue with the *Physics Today* advisory committee. I spoke to the committee on behalf of the concerned staff, and the committee reported our concerns to American Institute of Physics Executive Director and Chief Executive Officer Marc Brodsky, my boss's boss's boss's boss. Brodsky then contacted me and told me that I had made "a very, very serious charge." He demanded that I bring him the evidence. I did, in a written statement (available) and in an hour-long meeting with him. He said he would investigate the matter.

Five months later, Brodsky summoned me to his office to close the case. His conclusion: *Physics Today*'s affirmative action program was doing very well. He explained that he judges the program by its results. But what were the results? At that time, 20 March 1998, *Physics Today* had an all-white staff of editors and writers, with one exception. Since then, that one person has found other employment, in part because of her frustration over the magazine's affirmative action hypocrisy.

As of this writing, two years after Brodsky proclaimed affirmative action alive and well at *Physics Today*, the magazine has an all-white staff of editors. I'm not talking about a staff of four or five editors, who might all be white by coincidence. I'm talking about an all-white staff of 17 editors. (At least the magazine has hired minority group members as secretaries.) *Physics Today*'s editors do not look like the physics community, the journalism community, the Washington, D.C., community where the magazine is based, or the nation as a whole.

27 July 2000

S 000669

STATE OF MARYLAND
DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF UNEMPLOYMENT INSURANCE

NOTICE OF BENEFIT DETERMINATION

SSN: [REDACTED]
DATE MAILED: 06/26/2000
BENEFIT YEAR BEGINS: 06/04/2000

COLLEGE PARK CLAIM CENTER
P.O. BOX 1901
COLLEGE PARK MD 20740

MAIL REQUEST FOR APPEAL TO
LOCAL OFFICE ADDRESS ABOVE

JEFF SCHMIDT
3003 VAN NESS ST NW APT W406
WASHINGTON DC 20008 4830

ISSUE SIMPLE MISCONDUCT
SECTION OF LAW 8-1003
DATE OF DETERMINATION 06/26/2000
SPECIALIST ID EWCP1A

AMERICAN INSTITUTE OF PHYSICS
INCORPORATED
1 PHYSICS ELLIPSE
COLLEGE PARK MD 20740 3842

THE LAST DAY TO FILE AN APPEAL IS: 07/11/2000
(IF THIS DECISION IS CHANGED ON APPEAL, THE CLAIMANT
WILL BE REQUIRED TO REPAY ANY RESULTING OVERPAYMENT.)

DETERMINATION:

THE CLAIMANT WAS DISCHARGE FROM AMERICAN INSTITUTE OF PHYSICS ON 6/2/00
BECAUSE IT WAS ALLEGED THAT THE CLAIMANT WROTE A BOOK ON COMPANY TIME.

INSUFFICIENT INFORMATION HAS BEEN PRESENTED TO SHOW THAT THE CLAIMANT'S
ACTIONS CONSTITUTED MISCONDUCT IN CONNECTION WITH THE WORK. AS A RESULT, IT IS
DETERMINED THAT THE CIRCUMSTANCES SURROUNDING THE SEPARATION DO NOT WARRANT
A DISQUALIFICATION UNDER SECTION 8-1002 OR 8-1003 OF THE MARYLAND UNEMPLOYMENT
INSURANCE LAW.

BENEFITS ARE ALLOWED, IF OTHERWISE ELIGIBLE.

S 000670

APPEAL RIGHTS:

CLAIMANT AND EMPLOYER: Section 8-509 of the Maryland Unemployment Insurance Law provides the right to appeal this determination. The appeal must be in writing and may be submitted in person or mailed to the Local Office within (15) days of the determination. If mailed, the appeal must be postmarked within (15) days of the date of this determination. A claimant who appeals a determination and remains unemployed must continue to file timely claims for each week. NO LATE CLAIMS WILL BE ACCEPTED. If an appeal decision results in reversal or modification of this determination, the claimant may be paid benefits previously denied or may be overpaid benefits previously paid.

Losing Their Religion



BOOKS

immigrant Korean women or improve the transparency of the political campaign system. So they dutifully went to law school or enrolled in graduate programs in political science. Now, as they near graduation, some of them talk of the intellectual satisfactions of protecting major-label record companies against Internet interlopers or of maximizing the efficiency of New York's workfare program. What happened?

Is it that the graduates, older and wiser, have found a weakness in their adolescent dreams of social justice and democratic improvement? Or is it that the system of graduate education itself eviscerated their aspirations?

D.C. resident Jeff Schmidt would say that these newly minted professionals are still making a difference in society—just not the kind they'd once hoped to make. Indeed, he argues in *Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System That Shapes Their Lives* (Rowman & Littlefield) that students' professional choices—and the lifetime of decisions they can look forward to making as professionals—have a more powerful impact on democracy than their votes do. The reason, he says, that 80 percent of the entering students at Harvard Law School say they want to pursue a career in public service but 90 percent take jobs at corporate law firms after graduation is that the professional world demands their "ideological discipline," or adherence to an assigned point of view. Professional education transforms not just what you know, but who you think you are as well.

Schmidt, a former editor of the College Park, Md.-based science monthly *Physics Today*, has collected two decades of reflection on the problem of graduate training and professional life into his 280-page book. Schmidt holds a Ph.D. in physics from the University of California, Irvine, but you don't have to be a laser jock or lab rat to see that graduate programs combine sleep deprivation, too much work, rigorous competition, social isolation, and pressure to pursue particular pathways—and force students to accept the regimen or be booted from the program. This is a strategy designed to reshape a young person's social and political preferences, says Schmidt. "[Students] enter professional training with deeply held feelings about the personal and societal promise of professional work, and during professional training struggle against what often amounts to a brutal attempt to change their very identities," he writes. The struggle of their lives, as any disgruntled associate at a law firm will tell you, is to square their beliefs with the bullying of their profession.

To lessen the conflicts, says Schmidt, the professions require that future workers be transformed while they're still trainees. These transformed employees then can "work within an assigned ideology rather than from a specific list of tasks, because the professional works with unpredictable events," says the 54-year-old author. And

so the creative work goes to those who can be trusted not to stray from the path, while more creative types often find themselves working as waiters. (Schmidt does not except journalists from his critique of the professions.)

Schmidt's effort to help grad students resist their indoctrination through such chapters as "How to Survive Professional Training with Your Values Intact" was met with some resistance at *Physics Today*. In late May, Schmidt was fired after 19 years on the job, he says, for allegedly writing the book on company time. He successfully contested that charge with the State of Maryland Department of Labor and is now collecting unemployment benefits.



We're All Dissonant Beings: Jeff Schmidt with future worker (and daughter) Joshua Rose Schmidt

"The people who were most concerned about others seemed to be the least likely to survive," says Schmidt of his time in grad school. Not much seems to have changed for him, even in the working world.

—Garance Franke-Ruta

WASHINGTON
CityPaper
WASHINGTON'S FREE WEEKLY JULY 28-AUG. 1 2000

S 000671

52 July 28, 2000 Washington City Paper

THE CHRONICLE

of Higher Education®

DISCIPLINE THIS: Jeff Schmidt says his employers at *Physics Today* disliked his new book, *Disciplined Minds: A Critical Look at Salaried Professionals and the Soul-Battering System That Shapes Their Lives* (Rowman & Littlefield), so much that they decided to discipline him. In fact, they fired him.

Mr. Schmidt believes the trouble began after his boss, **Stephen G. Benka**, caught a co-worker reading an item about the book in *Hot Type* ("Steal This Book," May 26). "She was laughing out loud when my boss came along and asked, 'What's so funny?'" says Mr. Schmidt. Apparently, Mr. Benka was not amused by Mr. Schmidt's statement, quoted from the book, that he'd written *Disciplined Minds* partly on time stolen from work.

"He read it right there, but he didn't laugh," says Mr. Schmidt.

The following Wednesday, May 31, Mr. Benka asked him to join the publisher, **Randolph A. Nanna**, for a trip to the human-resources department. There a human-resources professional told him that he was being "terminated with cause" after 19 years at the magazine, during which Mr. Schmidt says he'd consistently received above-average or satisfactory evaluations. Then he was escorted out of the building without being allowed to return to his office.

Neither Mr. Nanna nor Mr. Benka would comment. **Theresa C. Braun**, director of human resources for the nonprofit American Institute of Physics, which publishes the magazine, said only that Mr. Schmidt "was not terminated because of the [*Chronicle*] article, nor because of the general content of the book."

Mr. Schmidt, who earned a Ph.D. in physics from the University of California at Irvine, says they told him that the very existence of the book was evidence that he wasn't "fully engaged" at *Physics Today*.

Hot Type

In fact, Mr. Schmidt's book argues that it is impossible to be "fully engaged" in a hierarchical institution, an argument that would hardly strike most people as new or shocking. The strength of the book, according to its supporters, lies in its humor and its detailed examination of the particularities of professional life.

"A witty, incisive, original analysis of the politics of professionalism," wrote **Michael Bérubé**, an English professor at the University of Illinois at Urbana-Champaign, in a jacket blurb. "Finally, a book that tells it like it is," wrote **Stanley Aronowitz**, a sociologist at the City University of New York.

Or now, for Mr. Schmidt, how it was.

—JEFF SHARLET

S 000672



DISCIPLINED MINDS

A CRITICAL
LOOK AT
SALARIED
PROFESSIONALS
AND THE
SOUL-BATTERING
SYSTEM THAT
SHAPES THEIR
LIVES

S 000673

JEFF SCHMIDT

Also included:

pages

1-7, 104-111.

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Materials, ANSI/NISO Z39.48—1992.

For my daughter,
Joshua Rose

S 000674

From: Sharon Quarles
To: Peter Pulsifer, PT Staff
Date: Fri, Nov 19, 1999 10:46 AM
Subject: Meeting with Randy Nanna

All,

Randy would like to schedule meetings with each of you (individually) on Monday and Tuesday of next week (Nov 22-23). The meetings are anticipated to last from 30 minutes to an hour.

If there are any days/times which are not good, please let me know ASAP. I will notify you of your appointment by COB today.

Telephone meetings will be arranged for those offsite.

S 000675

From: Sharon Quarles
To: Jeff Schmidt
Date: Mon, Nov 22, 1999 9:44 AM
Subject: appointment change w/Randy Nanna

Jeff,

Is it possible to reschedule your appointment w/Randy from 2:00pm to 3:30pm on Tues, Nov 23?

S 000676

From: Jeff Schmidt
To: squarles
Date: Tue, Nov 23, 1999 1:30 AM
Subject: appointment change w/Randy Nanna -Reply

Hi Sharon,

I don't have to leave the office by 4 pm as I had thought, and so you may schedule my interview with Randy for 3:30 pm or any other time Tuesday afternoon. If I don't hear otherwise, I'll plan on 3:00 pm.

Jeff

CC: jschmidt

S 000677

From: Sharon Quarles
To: Jeff Schmidt
Date: Tue, Nov 23, 1999 8:39 AM
Subject: Re: appointment change w/Randy Nanna -Reply

Thanks Jeff. I will schedule you for 3:30pm - 4:00pm today. Since the meetings have been running a little late, you may expect a 10-15min delay in schedule.

>>> Jeff Schmidt 11/23 1:30 AM >>>
Hi Sharon,

I don't have to leave the office by 4 pm as I had thought, and so you may schedule my interview with Randy for 3:30 pm or any other time Tuesday afternoon. If I don't hear otherwise, I'll plan on 3:00 pm.

Jeff

S 000678

Received: from m14.boston.juno.com (m14.boston.juno.com [205.231.101.193])
by po2.wam.umd.edu (8.9.0.Beta6/8.9.0.Beta6) with ESMTP id
KAA06909;

Thu, 10 Dec 1998 10:24:03 -0500 (EST)

Received: (from lugenbold@juno.com)

by m14.boston.juno.com (queuemail) id DV48ZKN8; Thu, 10 Dec 1998 10:22:25 EST

To: gpc@sff.net, tfeder@wam.umd.edu, jak@interport.net, jeff@wam.umd.edu

Subject: Re: dinner

Message-ID: <19981210.115435.4631.2.Lugenbold@juno.com>

References: <Pine.GSO.3.95q.981210085030.9658A-100000@rac10.wam.umd.edu>

X-Mailer: Juno 1.49

X-Juno-Line-Breaks: 0-4,6-27

From: lugenbold@juno.com (Paul J Elliott)

Date: Thu, 10 Dec 1998 10:22:25 EST

Status:

X-Mozilla-Status: 0015

Content-Length: 865

Or even more than a bit?

Paul

On Thu, 10 Dec 1998 08:50:56 -0500 (EST) toni feder <tfeder@wam.umd.edu>
writes:

>dinner at 7 at pho 84 sounds fine (now) I guess it depends on work a
>bit.

>

>Toni

>

>

>On Thu, 10 Dec 1998, JEAN KUMAGAI wrote:

>

>> yes, the subject for today is dinner. namely, today's dinner, and
>where

>> and when we'll be eating it. (i believe the "with whom" has already
>been

>> established, at least tentatively.) so how about 7 pm at Pho 84 (or
>> whatever it's called -- the vietnamese place near the cleveland park
>> metro)?

>>

>> jean

>>

>>

>

>

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S 000679

From: JEAN KUMAGAI <jak@interport.net>
To: ACP.AIP(JSCHMIDT,PELLIOT),I.mime("lugenbold@juno.c...
Date: Thu, Dec 10, 1998 8:30 am
Subject: dinner

yes, the subject for today is dinner. namely, today's dinner, and where and when we'll be eating it. (i believe the "with whom" has already been established, at least tentatively.) so how about 7 pm at Pho 84 (or whatever it's called -- the vietnamese place near the cleveland park metro)?

jean

CC: JEAN KUMAGAI <jak@interport.net>

S 000680

Received: from astor.interport.net
([199.184.165.18])
by acpgate.acp.org; Thu, 10 Dec 1998 08:31:42 -0500
Received: from interport.net (jak@park.nfs.interport.net [205.161.144.2])
by astor.interport.net (8.8.5/8.8.5) with ESMTP id IAA05188;
Thu, 10 Dec 1998 08:31:28 -0500 (EST)
Received: from localhost (jak@localhost)
by interport.net (8.8.5/8.8.5) with SMTP id IAA09676;
Thu, 10 Dec 1998 08:30:11 -0500 (EST)
Date: Thu, 10 Dec 1998 08:30:10 -0500 (EST)
From: JEAN KUMAGAI <jak@interport.net>
To: tfeder@wam.umd.edu, gpc@sff.net, lugenbold@juno.com, jschmidt@aip.acp.org,
pelliot@aip.acp.org
cc: JEAN KUMAGAI <jak@interport.net>
Subject: dinner
Message-ID: <Pine.GSO.3.96.981210082617.9222B-100000@interport.net>
MIME-Version: 1.0
Content-Type: TEXT/PLAIN; charset=US-ASCII

S 000681

From: toni feder <tfeder@wam.umd.edu>
To: JEAN KUMAGAI <jak@interport.net>
Date: Thu, Dec 10, 1998 8:50 am
Subject: Re: dinner

dinner at 7 at pho 84 sounds fine (now) I guess it depends on work a bit.

Toni

On Thu, 10 Dec 1998, JEAN KUMAGAI wrote:

> yes, the subject for today is dinner. namely, today's dinner, and where
> and when we'll be eating it. (i believe the "with whom" has already been
> established, at least tentatively.) so how about 7 pm at Pho 84 (or
> whatever it's called -- the vietnamese place near the cleveland park
> metro)?
>
> jean
>
>

CC: ACP.AIP(PELLIOT,JSCHMIDT),I.mime("lugenbold@juno.c...

S 000682

Received: from po4.wam.umd.edu
([128.8.10.166])
by acpgate.acp.org; Thu, 10 Dec 1998 08:53:48 -0500
Received: from rac10.wam.umd.edu ((IDENT root)@rac10.wam.umd.edu [128.8.10.150])
by po4.wam.umd.edu (8.9.0.Beta6/8.9.0.Beta6) with ESMTP id IAA12334;
Thu, 10 Dec 1998 08:51:25 -0500 (EST)
Received: from rac10.wam.umd.edu ((IDENT sendmail)@localhost [127.0.0.1])
by rac10.wam.umd.edu (8.9.0.Beta6/8.9.0.Beta6) with SMTP id IAA09731;
Thu, 10 Dec 1998 08:50:57 -0500 (EST)
Received: from localhost by rac10.wam.umd.edu (8.9.0.Beta6/8.9.0.Beta6) with SMTP id
IAA09726;
Thu, 10 Dec 1998 08:50:56 -0500 (EST)
X-Authentication-Warning: rac10.wam.umd.edu: tfeder owned process doing -bs
Date: Thu, 10 Dec 1998 08:50:56 -0500 (EST)
From: toni feder <tfeder@wam.umd.edu>
To: JEAN KUMAGAI <jak@interport.net>
cc: gpc@sff.net, lugenbold@juno.com, jschmidt@aip.acp.org, pelliot@aip.acp.org
Subject: Re: dinner
In-Reply-To: <Pine.GSO.3.96.981210082617.9222B-100000@interport.net>
Message-ID: <Pine.GSO.3.95q.981210085030.9658A-100000@rac10.wam.umd.edu>
MIME-Version: 1.0
Content-Type: TEXT/PLAIN; charset=US-ASCII

S 000683

From: Jeff Schmidt
To: I.mime("jak@interport.net"), I.mime("tfeder@wam.um...
Date: Thu, Dec 10, 1998 11:05 am
Subject: Re: dinner -Reply

I'll plan on meeting you all at 7 pm at Pho. But I'm flexible, so feel free to change the time or meeting place; just let me know.

The restaurant is called Pho-79, although surely Bill Gates's hard-working boys and girls will soon upgrade it to Pho-84 (with higher prices, slower service and so on).

Pho-79
3419 Connecticut Avenue NW
1/2 block south of Cleveland Park Metro
202-237-1015

Jeff

CC: ACP.AIP(PELLIOT), I.mime("gpc@sff.net", "lugenbold...

S 000684

From: "Graham P. Collins" <gpc@sff.net>
To: "Jeff Schmidt" <jschmidt@aip.acp.org>
Date: Thu, Dec 10, 1998 1:10 pm
Subject: Re: dinner -Reply

Suits me. 79 and 84 were both very good years, so even a faux 79 or 84 would go down well. I'll plan on meeting you at the restaurant around 7 pm unless I hear the plans change. Or let me know if anyone needs a ride there or back to the College Park area.

Please acknowledge the astounding restraint I have shown in not snapping up Paul's bait to commit an egregious pun involving the word "byte."

At 11:05 AM 12/10/98 , Jeff Schmidt wrote:
>Pho-79
>3419 Connecticut Avenue NW
>1/2 block south of Cleveland Park Metro
>202-237-1015

At 10:22 AM 12/10/98 , Paul J Elliott wrote:
>Or even more than a bit?

CC: ACP.AIP(PELLIOT), I.mime("lugenbold@juno.com")

S 000685

Received: from plano.sff.net
([207.55.146.51])
by acpgate.acp.org; Thu, 10 Dec 1998 13:12:26 -0500
Received: from gpc (unverified [199.174.209.45]) by plano.sff.net
(EMWAC SMTPRS 0.83) with SMTP id <B0001136858@plano.sff.net>;
Thu, 10 Dec 1998 12:11:19 -0600
Message-ID: <B0001136858@plano.sff.net>
X-Sender: gpc@pop.sff.net
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.0
Date: Thu, 10 Dec 1998 13:10:54 -0500
To: "Jeff Schmidt" <jschmidt@aip.acp.org>, jak@interport.net,
tfeder@wam.umd.edu
From: "Graham P. Collins" <gpc@sff.net>
Subject: Re: dinner -Reply
Cc: pelliot@aip.acp.org, lugenbold@juno.com
In-Reply-To: <s66fad18.009@acpgate.acp.org>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"

S 000686

From: JEAN KUMAGAI <jak@interport.net>
To: "Graham P. Collins" <gpc@sff.net>
Date: Thu, Dec 10, 1998 2:16 pm
Subject: Re: dinner -Reply

> unless I hear the plans change. Or let me know if anyone needs a ride
> there or back to the College Park area.

I'll need a ride back to CP.

> Please acknowledge the astounding restraint I have shown in not snapping up
> Paul's bait to commit an egregious pun involving the word "byte."

Noted.

jean

CC: Jeff Schmidt <jschmidt@aip.acp.org>

S 000687

Received: from astor.interport.net
([199.184.165.18])
by acpgate.acp.org; Thu, 10 Dec 1998 14:17:00 -0500
Received: from interport.net (jak@park.nfs.interport.net [205.161.144.2])
by astor.interport.net (8.8.5/8.8.5) with ESMTTP id OAA26288;
Thu, 10 Dec 1998 14:17:37 -0500 (EST)
Received: from localhost (jak@localhost)
by interport.net (8.8.5/8.8.5) with SMTP id OAA01403;
Thu, 10 Dec 1998 14:16:24 -0500 (EST)
Date: Thu, 10 Dec 1998 14:16:24 -0500 (EST)
From: JEAN KUMAGAI <jak@interport.net>
To: "Graham P. Collins" <gpc@sff.net>
cc: Jeff Schmidt <jschmidt@aip.acp.org>, tfeder@wam.umd.edu,
pelliot@aip.acp.org, lugenbold@juno.com
Subject: Re: dinner -Reply
In-Reply-To: <B0001136858@plano.sff.net>
Message-ID: <Pine.GSO.3.96.981210141419.1169A-100000@interport.net>
MIME-Version: 1.0
Content-Type: TEXT/PLAIN; charset=US-ASCII

S 000688

From: Sharon Quarles
To: Abby Klar, Bert Schwarzschild, Charles Day, Elli...
Date: Thu, Nov 19, 1998 4:28 pm
Subject: change of location, PT Advisory Committee

The PT Advisory Committee Meeting scheduled for tomorrow and Saturday will now be held in the 3rd floor conference.

S 000689

From: "Jean A. Kumagai" <jak@interport.net>
To: ACP.AIP(JSCHMIDT,PELLIOT,BSCHWARZ)
Date: 23 Sep 1998 (Wed) 9:27
Subject: Style committee

The minutes from the last staff meeting indicate that we're supposed to meet before the next staff meeting, on October 20. I'm planning to be away Oct 1-17, so I suggest that we have a conference call sometime on October 19 or on the morning of the 20th.

--Jean

S 000690

Received: from astor.interport.net
([199.184.165.18])
by acpgate.acp.org; Wed, 23 Sep 1998 09:26:55 -0400
Received: from [207.237.109.229] (usrts6p229.port.net [207.237.109.229])
by astor.interport.net (8.8.5/8.8.5) with ESMTTP id JAA25416;
Wed, 23 Sep 1998 09:27:52 -0400 (EDT)
Date: Wed, 23 Sep 1998 09:27:52 -0400 (EDT)
X-Sender: jak@pop.interport.net
Message-Id: <v03110702b22e6f24fdfa@[207.237.109.229]>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
To: bschwarz@aip.acp.org, pelliot@aip.acp.org, jschmidt@aip.acp.org
From: "Jean A. Kumagai" <jak@interport.net>
Subject: Style committee
Cc: jak@interport.net

S 000691

From: Tonya Gary
To: SBENKA, JBARKER, PELLIOT, TFEDER, CHARRIS, WKORNBE...
Date: 2 Sep 1998 (Wed) 16:32
Subject: Richard Fitzgerald's Welcoming Lunch

Steve has suggested that on Richard's first day, which will be Friday, September 4, the PT staff should welcome him by going out to lunch at the Royal Jade.

All who would like to participate, please let me know by Thursday at 3:00 p.m. so that I may make a reservation.

Thanks, and I hope you will join us.

Tonya

S 000692

From: Jeff Schmidt
To: APUTNEY
Date: 16 Mar 1998 (Mon) 13:07
Subject: Apparently I need more information -Reply -Reply -Reply

Hi Angela --

My SSN is [REDACTED]. Good luck with the university bureaucracy.

Jeff

CC: jschmidt

S 000693

From: Angela Putney
To: jschmidt
Date: 16 Mar 1998 (Mon) 11:37
Subject: Apparently I need more information -Reply -Reply

Jeff-

Actually, it is your SS# I need (the 14 digit number is your barcode for the library, it is all a little confusing, I apologize).

-angela

S 000694

From: Jeff Schmidt
To: APUTNEY
Date: 13 Mar 1998 (Fri) 15:43
Subject: Apparently I need more information -Reply

Hi Angela --

My 14-digit ID number is 21430008430633.

Jeff Schmidt
jeff@wam.umd.edu

CC: jschmidt

S 000695

From: Angela Putney
To: AKOJEVNI, KNILSEN, RIVIE, ACP.DSPIGELM, AAPT.WHEIN...
Date: 13 Mar 1998 (Fri) 15:23
Subject: Apparently I need more information

Howdy folks,

You are all the people who either have WAM accounts or are planning to get one soon. I was recently told that I need to give them your ID number as well, so could you all please send me those too. Sorry for the inconvenience.

-angela

CC: aputney

S 000696

From - Tue Feb 24 07:49:49 1998
Received: from m14.boston.juno.com (m14.boston.juno.com [205.231.101.193])
by pol.wam.umd.edu (8.8.8/8.8.7) with ESMTP id KAA02578;
Wed, 18 Feb 1998 10:22:37 -0500 (EST)
Received: (from lugenbold@juno.com)
by m14.boston.juno.com (queuemail) id K|M20395; Wed, 18 Feb 1998 10:15:46 EST
To: gpc@sff.net, tfeder@wam.umd.edu, jak@interport.net, jeff@wam.umd.edu
Subject: Re: Father Pierre's letter
Message-ID: <19980218.114112.7599.2.Lugenbold@juno.com>
References: <3.0.5.16.19980204123912.501f2924@pop.sff.net>
X-Mailer: Juno 1.38
X-Juno-Line-Breaks: 15-27,29-32,34-36,38,40-44
From: lugenbold@juno.com (Paul J Elliott)
Date: Wed, 18 Feb 1998 10:15:46 EST
Status: O
X-Mozilla-Status: 0011
Content-Length: 2570

Just a minute, people. You're missing the point. Who is this person? Will someone please explain to me what he has done? Who does he know? When I called Marty Perl, Steve Chu, Sid Weinberg and other friends of mine, no one has even heard of him. Why should we profile him? When I started the profile department, we agreed to limit them only to the best and the brightest. In fact, I was the only one who wanted a profile on Bill Phillips before he was famous, and I had to fight hard to get it into the magazine. I just received a note from Bill reminding me about it. He also mentioned how reluctant he was himself about being profiled, but how he had changed his mind when I brought Hans Bethe over to his apartment for tea. In all of my years here we have never run a story about a priest, although Dick Feynman once sent me a funny postcard about a bishop when he was delivering a paper in Rome and happened to run into a second cousin of mine at the opera. On a personal note, let's keep in mind that a dying priest is not going to leave behind any wife or children that I can stay in contact with afterwards.

Lori Ubki

On Wed, 04 Feb 1998 12:39:12 "Graham P. Collins" <gpc@sff.net> writes:
>At 03:14 PM 2/3/98 -0500, Jean wrote:
>>Subject: Father Pierre's letter
>>
>>Does anyone else have comments on the Father Pierre letter? If so,
>send them along.
>
>I really don't think it's a good idea to profile someone who will soon
>be dead. After all, if we get letters to the editor after he dies, how
>will he answer them? And besides, would he qualify for an obit if he
was
>already dead? Maybe he's just clinging on grimly to life just to get
>around PT's stringent obit screening. This could set a bad precedent,
>and if other nearly dead physicists hear of it, before we know it the
>magazine will be full of profiles of nearly dead but underqualified
physicists.
> I think it would be much better to profile someone who is boring, the
>same as everyone else, and who can supply us with a medical affidavit
>testifying to his good health. (But remember that if the affidavit is
from a
>nonAmerican doctor we should be extra careful, because a lot of

S 000697

countries don't have the same medical standards as the US.)

>

>-- Graham Goss Collins

>

>

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Or call Juno at (800) 654-JUNO [654-5866]

S 000698

From: Charles Harris
To: pt, feder
Date: 27 Feb 1998 (Fri) 16:33
Subject: and another thing... -Reply -Reply -Reply

i see your point. i like the precision of 1988 -- . we don't want people standing around the urinals laughing at us.

S 000699

From: Jean A. Kumagai <jak@interport.net>
To: ACP.AIP(CHARRIS,TFEDER,SBENKA,PELLIOT,JSCHMIDT,BSC...
Date: 3 Feb 1998 (Tue) 15:11
Subject: Father Pierre's letter

Does anyone else have comments on the Father Pierre letter? If so, send them along.

S 000700

Received: from amsterdam.interport.net ([199.184.165.9])
by ACPGate.acp.org (GroupWise SMTP/MIME daemon 4.1 v3)
; Tue, 3 Feb 98 15:10:51 EST
Received: from [207.237.108.177] (usrts2p24.port.net [207.237.105.24])
by amsterdam.interport.net (8.8.5/8.8.5) with SMTP id PAA18395;
Tue, 3 Feb 1998 15:11:11 -0500 (EST)
Date: Tue, 3 Feb 1998 15:11:11 -0500 (EST)
X-Sender: jak@pop.interport.net
Message-Id: <v01530503b0fcc7d9338e@[207.237.108.177]>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
To: bgl@worldnet.att.net, bschwarz@aip.acp.org, gcollins@aip.org,
goodwin@aip.acp.org, jschmidt@aip.acp.org, pellicot@aip.acp.org,
sbenka@aip.acp.org, gbl2@aip.org, tfeder@aip.acp.org, wsk@aip.acp.org,
jbarker@aip.org, cday@aip.org, charris@aip.acp.org
From: jak@interport.net (Jean A. Kumagai)
Subject: Father Pierre's letter
Cc: jak@interport.net

S 000701

From: Jean A. Kumagai <jak@interport.net>
To: ACP.AIP(CHARRIS,TFEDER,SBENKA,PELLIOT,JSCHMIDT,BSC...
Date: 29 Dec 1997 (Mon) 16:37
Subject: Re: Father Pierre's letter

This is the letter I'd referred to in my list of profile possibilities. It was written by Father Pierre Cardon de Lichtbuer and read aloud at the physics careers symposium in October at Case Western.

Jean

>
>Twenty-five years later...

>
>
> It is almost exactly 25 years ago that I obtained, thanks to the
>good advice and help of Phil Taylor, a Ph.D., in theoretical solid state
>physics. The topic was magnetoresistance in cubic metals. Such a stay in
>the US was a most interesting experience. Besides physics I learned a lot
>about the country, was able to meet many people, and was fortunate enough
>to spend six months in Seattle when Phil was there as a visiting professor.
>The beginning of the seventies was a very interesting period in the US,
>with the Watergate hearings and the end of the Nixon era. Living in the US
>allowed me to appreciate and evaluate the advantages and the drawbacks of
>the European and American political and economic systems.

>
> With my PhD I went back to Belgium, where I had a four-year grant
>from the Belgian National Science Foundation. At the same time I began
>theological studies, in order to prepare myself to become a minister in the
>Roman Catholic faith. This helped me to develop my parallel interests in
>physics and the scriptures, especially the Gospel of Saint John. I became
>a priest in 1976.

>
> I then changed fields completely, and worked for four years at the
>Vatican Observatory, located then at Castel Gandolfo, a very beautiful
>place on the rim of a crater lake, twenty kilometers south of Rome. The
>Vatican observatory has surprisingly good equipment to do research; and in
>recent years it has opened a large extension with a 2m telescope in
>Arizona. Observational astronomy is just a marvelous field of research.
>Working at night under a beautiful sky one meets all kinds of people who
>have reflected on the very fundamental problems of the world, and are
>interested in the philosophical implications of their research.

>
> In 1980 I was reassigned from the Observatory and sent to Central
>Africa. This was the start of fifteen years of work in the region of the
>Great African Lakes, first in Burundi, at the University of Bujumbura, and
>then for six years in Bukavu, in Eastern Zaire, now renamed Congo. Going
>to Africa was like going to another planet. It is hard even to imagine the
>contrast I found in going from the genteel world of the Vatican Observatory
>to Burundi. In parts of Africa fatalism is the major barrier to
>development, and people find it hard to take their life into their own
>hands.

>
> In Bujumbura I had the impressive title of professor of physics and
>chairman of the physics department, but the work was a little different
>from what the title suggests. Young people there are as intelligent as
>young people elsewhere in the world, but their background is one of
>deprivation, with a school system that is continually deteriorating, where
>it even exists. A university degree may mean precious little more than a
>certificate of privileged family background.

>
> To do fundamental research there was not possible for me, and so I
>kept myself busy with lectures on astronomy and other topics in the high
>schools. And then I turned to some applications of physics. Photovoltaic
>electricity, or solar cells, became my main occupation outside my
>university teaching duties. Photovoltaics work very well in these
>countries; the important thing is to have good materials and to make a
>sturdy installation. So I became an electrician, and installed a lot of
>solar systems, mainly for lighting, but also for pumping water and for
>refrigeration. I did this in missions, schools, hospitals and dispensaries
>-- altogether close to 150 plants in Burundi, Eastern Zaire, Rwanda, and
>Tanzania. That gave me the opportunity to meet a lot of people and to be

S 000702

>able to understand something of the situation in the region around the
>Great African Lakes.

>

> Once people know that you have some manual skills they ask you not
>only for electricity, but also for carpentry, plumbing, and all kinds of
>other services. Through the solar cells I got involved in a sort of import
>business from Belgium. With some friends in Belgium I developed two
>electronic circuits, one for the protection of the battery and the other to
>make normal fluorescent lights work off a 12 volt battery. The devices
>then on the market were of poor quality and high price, and so we became
>designers and importers of electronic circuits.

>

> Now material development, like bringing power to the villages, is
>very nice and useful, but it is not enough for these countries. One has to
>bring something more valuable, and this is basically in the field of
>education. In this way I started giving a correspondence course in
>philosophy; a reflection on the basic dimensions of being human. It was
>adult education, quite a hard task for those took the course, the notes for
>which now exist in French and in Kiswahili.

>

> Burundi at this time was ruled by the dictator Bagaza; and that was
>also quite an experience. His spies were everywhere, and he became
>increasingly suspicious of foreigners like myself -- not without reason, as
>we were indeed intent on undermining his regime. He began systematically
>arresting or expelling foreigners. I was warned in the villages of his
>intentions, and managed to escape to Zaire.

>

> After the Burundi period I spent almost two years in Belgium with
>occasional visits to Zaire to maintain the solar electricity business. Then
>I was appointed to the university of Bukavu in eastern Zaire. My time was
>taken by teaching at the university, development projects and then the
>human and religious education of young people. These latter activities took
>more and more of my time.

>

> Then started the genocide in Rwanda. The militia and a segment of
>the population killed in a most brutal way a million people. Afterwards
>came the flood of the Hutu people, forced by the defeated militia to leave
>the country and to become a human shield for the killers. Bukavu is just
>at the border with Rwanda, and so I was witness to much of this. You will
>probably have seen pictures on TV of the building I was living in, a big
>three-story-high yellow building in front of which we had tens of thousands
>of these so-called refugees.

>

> My views on these issues were not popular with the authorities in
>Zaire, and my work there finished with my expulsion. So I am now back in
>Belgium, and concentrating on my writings on the Gospels. I have a thick
>book at the printers.

>

> Since January I am plunged into something very different: being
>seriously ill. It started last year with back pain; and got to the point
>where I could not stand on my feet any more. They found an inoperable
>tumor inside my spinal column. They treated it with radiotherapy, but then
>found other problems and I received the whole treatment of chemotherapy for
>non-Hodgkin lymphomas. Now I am having treatment by autologous stem cell
>transplantation. It has been quite interesting to see all the modern
>techniques of basic physics research used in the medical field. Magnetic
>resonance, X-ray scans; positron emission tomography and all the attendant
>imaging techniques.

>

> When one is fit one can hardly imagine what a marvelous thing it is
>to be in good health. But health is not the only value in life, and surely
>not the ultimate. For me it is the religious dimension of the human being.

>

>

> Thanks for having had the patience to listen to me till the end. I
>wish I could have been with Phil and you all. A French expression says
>"man proposes but God disposes"; this is fundamentally a good
>interpretation of what is happening in our life. I wish I could tell you
>some more about it.

>

> Good luck with your meeting, and congratulations to Phil.

>

>-----
>Pierre Cardon S.J. Waversebaan 220, B 3001 Heverlee Tel 00-32-16-398475,
>Fax 00-32-16-407221
>-----

Received: from amsterdam.interport.net ([199.184.165.9])
by ACPGate.acp.org (GroupWise SMTP/MIME daemon 4.1 v3)
; Mon, 29 Dec 97 16:37:28 EST
Received: from [207.237.107.213] (usrts3p64.port.net [207.237.106.64])
by amsterdam.interport.net (8.8.5/8.8.5) with SMTP id QAA13017;
Mon, 29 Dec 1997 16:37:18 -0500 (EST)
Date: Mon, 29 Dec 1997 16:37:18 -0500 (EST)
X-Sender: jak@pop.interport.net
Message-Id: <v01530503b0cd822527d7@[207.237.107.213]>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
To: bgl@worldnet.att.net, bschwarz@aip.acp.org, gcollins@aip.org,
goodwin@aip.acp.org, jschmidt@aip.acp.org, pellicot@aip.acp.org,
sbenka@aip.acp.org, gbl2@aip.org, tfeder@aip.acp.org, wsk@aip.acp.org,
jbarker@aip.org, cday@aip.org, charris@aip.acp.org
From: jak@interport.net (Jean A. Kumagai)
Subject: Re: Father Pierre's letter
Cc: jak@interport.net

S 000705

From: Jean A. Kumagai <jak@interport.net>
To: ACP.AIP(JSCHMIDT)
Date: 6 Jan 1998 (Tue) 16:25
Subject: Father Pierre

Jeff,

This is the message from Barbara that you didn't get. Actually, I just looked at another message she sent earlier and you weren't copied on that one either. Neither is Rita, so probably not a deliberate omission.

Jean

>Date: Mon, 29 Dec 1997 15:43:18 -0800
>From: Barbara Levi <bgl@worldnet.att.net>
>Organization: Physics Today
>MIME-Version: 1.0
>To: Jean Kumagi <jak@interport.net>
>CC: Barbara Levi <bgl@worldnet.att.net>,
> Bert Schwarzschild <bschwarz@aip.acp.org>,
> Carol Lucas <clucas@aip.acp.org>, Charles Harris <charris@aip.acp.org>,
> Chas Day <cdays@aip.acp.org>, Elliot Plotkin <eplokin@aip.acp.org>,
> Gloria Lubkin <glubkin@aip.acp.org>,
> Graham Collins <gcollins@aip.acp.org>,
> Irwin Goodwin <goodwin@aip.acp.org>, Jean Kumagi <jak@interport.net>,
> Judy Barker <jbarker@aip.acp.org>, Paul Elliott <pelliot@aip.acp.org>,
> Steve Benka <sbenka@aip.acp.org>, Susan Funk <sfunk@aip.acp.org>,
> Toni Feder <tfeder@aip.acp.org>,
> Warren Kornberg <wkornber@aip.acp.org>
>Subject: Father Pierre
>
>Jean:
>
>The letter from Father Pierre is indeed interesting but I don't think
>you should do a profile on someone who is dead. For one thing, you
>would not be able to ask him questions--say, about what in his training
>was useful in his experiences--to help tailor the piece to a physics
>audience.
>
>But you might consider profiling a physicist who has served in Africa in
>the Peace Corps. I have a friend who served in the Peace Corps in Zaire
>after getting an undergraduate degree in physics. He was assigned to
>teach physics to students in a school in the countryside but found that
>most of the academics were irrelevant to their way of life. He felt
>much more productive when he used his technical background to do things
>like helping a village build a pump. Such a profile would be one was to
>get at least some information into the magazine about physics for the
>developing world.
>
>Another person (a physics PhD) who has worked in developing countries is
>Sam Baldwin, who has worked with African villagers on more efficiently
>designed cook stoves. That work was about 10 years ago (just before Sam
>and I both worked for Princeton's Center for Energy and Environmental
>Studies), and I don't know what Sam has done on the subject of
>developing nations recently. Since Princeton, Sam has worked for OTA on
>energy issues and is now with the National Science and Technology
>Council Agency (?). He was the executive director of the recently
>released PCAST study of "Federal Energy Research and Development of the
>Challenges of the Twenty-First Century." He might give you a lead on a
>physicist with more recent experience with developing countries.
>---
>Barbara G. Levi bgl@worldnet.att.net
>Senior Editor 805 965 3483 (tel)
>Physics Today 805 963 2574 (fax)
>

S 000706

Received: from amsterdam.interport.net ([199.184.165.9])
by ACPGate.acp.org (GroupWise SMTP/MIME daemon 4.1 v3)
; Tue, 6 Jan 98 16:26:12 EST
Received: from [207.237.107.110] (usrts4p254.port.net [207.237.107.254])
by amsterdam.interport.net (8.8.5/8.8.5) with SMTP id QAA12481
for <jschmidt@aip.acp.org>; Tue, 6 Jan 1998 16:25:58 -0500 (EST)
Date: Tue, 6 Jan 1998 16:25:58 -0500 (EST)
X-Sender: jak@pop.interport.net
Message-Id: <v01530503b0d80c1615c1@[207.237.107.110]>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
To: jschmidt@aip.acp.org
From: jak@interport.net (Jean A. Kumagai)
Subject: Father Pierre

S 000707

From: Carol Lucas
To: PT
Date: 7 Jan 1998 (Wed) 11:07
Subject: Physics Today 50th Anniversary Party

There will be a meeting on Friday, January 16, 1998 at 9:30 a.m. in Conference Room A with Dr. Brodsky, Jim Stith and others to discuss the 50th Anniversary Party and begin making plans. All are invited. Please RSVP to me as soon as possible.

Thanks,
Carol

REALLY = 6
300 AM - 11:00 PM
For 01/16/98

S 000708

From: Bert Schwarzschild
To: ACP.ACPGate("bgl@worldnet.att.net"), ACP.AIP(CDAY,...
Date: 30 Dec 1997 (Tue) 10:47
Subject: Re: Father Pierre's letter -Reply

Jean,
Fr. Pierre's letter is quite moving. I think it would be wonderful to see it in PT,
in its entirety.
Bert S.

S 000709

From: Charles Day
To: ACP.AIP(BSCHWARZ, CHARRIS, gcollins, glubkin, jbar...
Date: 30 Dec 1997 (Tue) 9:39
Subject: Re: Father Pierre's letter -Reply

Hello Jean,

Like Barbara, I found Fr Pierre's letter interesting. I think he'd make a good subject for a profile. His letter covers a lot of ground, but, perhaps because of this, doesn't explore any one issue in much depth. If you interviewed him, you could presumably get him to talk more about, say, how his religious and physics training prepared him for work in Africa.

Chas

S 000710

From: Jean A. Kumagai <jak@interport.net>
To: Barbara Levi <bgl@worldnet.att.net>
Date: 30 Dec 1997 (Tue) 8:27
Subject: Re: Father Pierre

>The letter from Father Pierre is indeed interesting but I don't think
>you should do a profile on someone who is dead.

He's not dead.

CC: ACP.AIP(CHARRIS,TFEDER,SBENKA,PELLIOT,JSCHMIDT,BSC...

S 000711

Received: from amsterdam.interport.net ([199.184.165.9])
by ACPGate.acp.org (GroupWise SMTP/MIME daemon 4.1 v3)
; Tue, 30 Dec 97 08:27:48 EST
Received: from [207.237.104.187] (usrtslp187.port.net [207.237.104.187])
by amsterdam.interport.net (8.8.5/8.8.5) with SMTP id IAA00584;
Tue, 30 Dec 1997 08:27:46 -0500 (EST)
Date: Tue, 30 Dec 1997 08:27:46 -0500 (EST)
X-Sender: jak@pop.interport.net
Message-Id: <v01530500b0ce618b634e@[207.237.107.213]>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
To: Barbara Levi <bgl@worldnet.att.net>
From: jak@interport.net (Jean A. Kumagai)
Subject: Re: Father Pierre
Cc: bgl@worldnet.att.net, bschwarz@aip.acp.org, gcollins@aip.org,
goodwin@aip.acp.org, jschmidt@aip.acp.org, pelliot@aip.acp.org,
sbenka@aip.acp.org, gbl2@aip.org, tfeder@aip.acp.org, wsk@aip.acp.org,
jbarker@aip.org, cday@aip.org, charris@aip.acp.org, jak@interport.net

S 000712

From: Paul Elliot
To: JSCHMIDT
Date: 31 Oct 1997 (Fri) 18:18
Subject: How Persuasive I Am, or Win None, Lose Some

From: Paul Elliot
To: SBENKA
Date: 10/31/97 4:48pm
Subject: Riordan article

Steve:

I understand that Riordan has been insistent that the Shockley quotes in his article be presented in italics. In this case, the use of italics contravenes not only PT and Chicago Manual editorial style but also (from what I have seen in back issues and what Elliot has told me) PT typographical style.

This may not be a major matter and I doubt that any reader will complain, but such typographical quirkiness is one of the hallmarks of amateur publishing, and this case--even if it isn't setting a precedent--does seem to be an instance of PT capitulating to outside pressure (a topic we discussed briefly a few days ago).

Any chance of repelling the non-Roman invader?

Paul

From: Stephen Benka
To: PELLLOT
Date: 10/31/97 5:48pm
Subject: Riordan article -Reply

Nope.

S 000713

From: Jeff Schmidt
To: SBENKA
Date: 29 Oct 1997 (Wed) 4:15
Subject: Physics News Update

Steve --

Here are my rankings for the December "Update" items:

- 5 A new theory of NMR....
- 8 Particle identification....
- 9 Fission helps superconductivity....
- 3 Turning onions into diamonds....
- 4 Molecular Hydrogen....
- 1 A polymer that can transfer....
- 2 The first solid material....
- 6 One of the most convective....
- 7 Taking the temperature....

--Jeff

CC: jschmidt

S 000714

From: Jeff Schmidt
To: ACPGate("tfeder@wam.umd.edu")
Date: 21 Aug 1997 (Thu) 15:32
Subject: PC for October and beyond -Reply

I heard that Michio Kaku of CUNY was speaking in the DC area about the Cassini launch. He is someone to consider interviewing for a story about Cassini. But maybe you already know about him.

Jeff

CC: jschmidt

S 000715

From: Jean Kumagai <jak@interport.net>
To: Stephen Benka <sbenka@aip.acp.org>
Date: 13 Mar 1997 (Thu) 11:38
Subject: Re: Draft for Boswell

Hi, Steve

Toni and I have looked at your draft, and we have some suggested changes (imbedded in the text below), along the same lines as Graham's. In general, we think the message sums up nicely yesterday's discussion -- in fact, it would be really useful to have such a summary following future staff discussions, on this or any other issue.

Jean

>Dear Peter,
>
>I trust that your trip across Switzerland was enjoyable and relaxing.
>Here, the first bloom of spring is in progress.
>
>It looks like I got too far ahead of the staff here, with regard to using a
>European correspondent, and they have a number of questions that I
>don't have answers for yet. [SUGGEST DELETING THE REST OF THE
>PARAGRAPH]For example, How can we ensure that the
>high standards we hold ourselves to will be met by a foreign
>correspondent? Might a foreign correspondent best be used for political,
>rather than scientific reporting? Might we pay a correspondent a
>retainer to feed us exclusive tips, rather than to write on a freelance
>basis? Might the money better be used for a local freelancer, to handle
>some burdensome parts of the magazine (like obituaries, awards, and
>new products), allowing our own staff to do more reporting? As you
>can see, we have a thoughtful (and tough!) bunch here, which is a big
>reason why Physics Today is so highly regarded.
>
>While we wrestle some more with the best strategic use of our budget
>[CHANGE TO "THESE ISSUES"],
>would you be kind enough to send us a formal resume, and some of the
>pieces (both scientific and political, if possible) that you've written?
>[SUGGEST DELETING NEXT SENTENCE]That
>additional information will help us reach a decision more quickly.
>
>I hope you understand that our slowing down on this is not a reflection
>on you, but arises from a need to consider various ramifications of our
>decision, not all of which had occurred to me earlier.
>I look forward to hearing from you again, and I wish you
>
>All the best,
>
>Steve Benka
>Physics Today
>One Physics Ellipse
>College Park, Maryland 20740-3843
>USA Phone: 301-209-3037; Fax: 301-209-0842

CC: ACP.AIP(wkornber,tfeder,rwehrenb,pelliot,jschmidt,...)

S 000716

Received: from [207.38.250.17] (ts4port44.port.net [207.38.249.172])
by york.interport.net (8.8.5/8.8.5) with SMTP id LAA02069;
Thu, 13 Mar 1997 11:38:53 -0500 (EST)
Date: Thu, 13 Mar 1997 11:38:53 -0500 (EST)
X-Sender: jak@pop.interport.net
Message-Id: <v01530505af4d926ddf0c@[207.38.250.17]>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
To: Stephen Benka <sbenka@aip.acp.org>
From: jak@interport.net (Jean Kumagai)
Subject: Re: Draft for Boswell
Cc: jak@interport.net, bgl@worldnet.att.net, bschwarz@aip.acp.org,
charris@aip.acp.org, clucas@aip.acp.org, eplotkin@aip.acp.org,
gcollins@aip.org, goodwin@aip.acp.org, jschmidt@aip.acp.org,
pelliot@aip.acp.org, rwehrenb@aip.acp.org, tfeder@aip.acp.org,
wkornber@aip.acp.org, gbl2@aip.org, jbarker@aip.org

S 000717

From: Jean Kumagai <jak@interport.net>
To: ACP.AIP(jschmidt)
Date: 13 Mar 1997 (Thu) 10:41
Subject: Draft for Boswell

>Date: Thu, 13 Mar 1997 10:10:50 -0500

>From: Stephen Benka <sbenka@aip.acp.org>

>To: bschwarz@aip.acp.org, charris@aip.acp.org, tfeder@aip.acp.org,
> gbl2@aip.org, gcollins@aip.org, jak@interport.net,
> bgl@worldnet.att.net

>Cc: sbenka@aip.acp.org

>Subject: Draft for Boswell

>

>Here's my draft of the message to go to Peter Boswell. For "Subject" I
>was thinking "Slowing down at Physics Today." Please suggest any
>changes you like. Thanks (and I mean it!). --Steve

>

>Dear Peter,

>

>I trust that your trip across Switzerland was enjoyable and relaxing.

>Here, the first bloom of spring is in progress.

>

>It looks like I got too far ahead of the staff here, with regard to using a

>European correspondent, and they have a number of questions that I

>don't have answers for yet. For example, How can we ensure that the

>high standards we hold ourselves to will be met by a foreign

>correspondent? Might a foreign correspondent best be used for political,

>rather than scientific reporting? Might we pay a correspondent a

>retainer to feed us exclusive tips, rather than to write on a freelance

>basis? Might the money better be used for a local freelancer, to handle

>some burdensome parts of the magazine (like obituaries, awards, and

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>reason why Physics Today is so highly regarded.

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>While we wrestle some more with the best strategic use of our budget,

>would you be kind enough to send us a formal resume, and some of the

>pieces (both scientific and political, if possible) that you've written? That

>additional information will help us reach a decision more quickly.

>

>I hope you understand that our slowing down on this is not a reflection

>on you, but arises from a need to consider various ramifications of our

>decision, not all of which had occurred to me earlier.

>I look forward to hearing from you again, and I wish you

>

>All the best,

>

>Steve Benka

>Physics Today

>One Physics Ellipse

>College Park, Maryland 20740-3843

>USA Phone: 301-209-3037; Fax: 301-209-0842

>

S 000718

Received: from [207.38.250.17] (ts5port55.port.net [207.38.250.55])
by york.interport.net (8.8.5/8.8.5) with SMTP id KAA05630
for <jschmidt@aip.acp.org>; Thu, 13 Mar 1997 10:41:52 -0500 (EST)
Date: Thu, 13 Mar 1997 10:41:52 -0500 (EST)
X-Sender: jak@pop.interport.net
Message-Id: <v01530503af4d8a88046b@[207.38.250.17]>
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"
To: jschmidt@aip.acp.org
From: jak@interport.net (Jean Kumagai)
Subject: Draft for Boswell

S 000719



Wayne K. Curry
County Executive

THE PRINCE GEORGE'S COUNTY GOVERNMENT

HUMAN RELATIONS COMMISSION



Jeff Schmidt
3003 Van Ness Street, N. W.
Washington, D.C. 20008

Complainant

vs.

HRC Case No.: rf00-1135
EEOC Case No.: 12HA10020

American Institute of Physics
One Physics Ellipse
College Park, Maryland 20740

Respondent

DETERMINATION

Under the authority vested in me by Division 12, Subdivision VII, Section 2-222, Prince George's County Code, 1995 edition, as amended, I issue the following determination as to the merits of the subject charge.

The Respondent is an employer within the meaning of Section 2-186(5) Division 12, Subtitle I, Prince George's County Code, 1995 edition, as amended and the timeliness and all other jurisdictional requirements have been met.

FACTS AND CONCLUSIONS

Complainant alleges that Respondent retaliated against him in the termination of his employment on May 31, 2000.

Respondent denies Complainant's allegation.

Respondent is a not-for-profit membership corporation that promotes the advancement of knowledge of physics and is located in College Park, Maryland. Respondent hired Complainant initially as an Associate Editor, then as a Senior Associate Editor.

Complainant alleges that on or about August 17, 1999, he made an internal Title VII based complaint to his Supervisors that the Respondent was not following its Affirmative

1400 McCormick Drive, Suite 245
Largo, Maryland 20774

S 000720

(301) 883-6170 TDD (301) 925-5167 FAX (301) 883-2649

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Action Program in the hiring and promotion of employees (Black) in professional positions. Complainant alleges that after he made his internal Title VII based complaint on August 17, 1999, he was given a negative Performance Review. Complainant alleges that on May 31, 2000, he was accused of writing a book on company time that he alleges is not true, and was terminated. Complainant alleges that from January 28, 1998, to May 31, 2000, Respondent banned any private conversations between himself and co-workers (White) because Respondent thought he was organizing to bring about changes in Respondent's policies, including their discriminatory hiring practices.

Respondent denies Complainant's allegations. Respondent proffers that for several years prior to his discharge, Complainant consistently was counseled because he failed or refused to meet Respondent's productivity standards. Respondent proffers that in late May 2000, Respondent learned that Complainant recently published a book announcing that it was written on "stolen time." Respondent proffers that in the book's introduction section, Complainant unequivocally admitted to writing it during work hours. Respondent proffers that in pertinent part, Complainant wrote in the Introduction of his book: "This book is stolen, written in part on stolen time... so I began spending some office time on my own work...." Respondent proffers that after Complainant admittedly used Respondent's time to write the book, rather than strive to meet Respondent's productivity standards, his employment was terminated.

Respondent acknowledges that in 1997 Complainant alleged that Respondent failed to make efforts to recruit minority professionals for a particular Physics Today (PT) Associate Editor position. Respondent proffers that its Executive Director/CEO investigated Complainant's allegations and found them to be baseless. Respondent proffers that its Executive Director/CEO met with Complainant several times in 1998, to relay the findings of his investigation.

Respondent proffers that Complainant's negative performance evaluation and subsequent discharge was not based on his filing an internal Title VII based complaint. Respondent proffers that for several years prior to his discharge, Complainant failed or refused to meet Respondent's productivity goals, and was resistant, at times, to assuming responsibility for articles prior to the "ready to edit" stage. Respondent proffers that it never banned Complainant from having private conversations with his co-workers. Respondent proffers that after Complainant made his internal Title VII based complaint, Respondent afforded Complainant favorable treatment by allowing Complainant to take a six month sabbatical in 1998-1999, and by allowing Complainant to change his employment status from full-time to part-time.

The focus of the Commission's investigation centers on Complainant's allegation that Respondent retaliated against him when he was banned from talking to his co-employees

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(White), given a negative performance evaluation, and terminated his employment on May 31, 2000.

The first focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complainant he was given a negative performance evaluation.

A review was conducted of Complainant's personnel file. The review reveals a performance review dated February 15, 1995 for the period February 1994-January 1995. The performance review reveals an overall rating of 3.0. The performance review reveals that Complainant is capable of editing 16 articles a year, and he "did not meet this goal in 1994." The performance review states that Complainant's "productivity on his main function of editing feature articles is below capacity. With the magazine's call for more but shorter articles, [Complainant] must aim to edit a minimum of 16 articles published April 1995 to March 1996." The performance review reveals that it was signed by Complainant on February 16, 1995.

A review was conducted of Complainant's performance review dated February 13, 1997 for the period February 1996-January 1997. The performance review reveals an overall rating of 4.0. The performance review reveals Complainant was "one shy of his agreed upon goal of 16. The performance review states that Complainant "needs to increase his article output in 1997 to at least 16, and preferably 18." The performance review reveals that Complainant signed it on February 13, 1997.

A review was conducted of Complainant's performance review dated March 12, 1998 for the period February 1997-January 1998. The performance review reveals an overall rating of 3.0. The performance review reveals Complainant's "articles are generally on time and are often early. For this review period, he was asked to produce 16-18 articles. Seven months into this review period, we made an adjustment (reflected in the above weight) because of his imminent fatherhood that effectively reduced his production minimum from 16 to 15, and he met this revised goal." The performance review states "over the last few years, 'Physics Today' has been undergoing a number of changes-including raising levels of productivity, editorial quality and graphic design. [Complaint] is very capable of meeting these new demands. At the request of the Editor, [Complainant] did begin to handle his own correspondence with authors, as is done by all other articles editors. He has not yet begun to do his own keyboarding or editorial changes, as is done by all other articles editors."

The performance review reveals that "in the next review period, [Complainant] is expected to produce 18 high-quality articles, editing and rewriting text as needed, handling his own correspondence and doing all of his own keyboarding. The articles

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Jeff Schmidt

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must be consistent with the magazine's standards of accuracy, readability, brevity, and visual appeal." The performance review reveals that Complainant did not sign the review.

A review was conducted of a memorandum dated October 1, 1998, from Complainant's Supervisor to Complainant. The memorandum reveals that the subject of the memorandum was performance, expectations, and sabbatical. The memorandum states "to avoid misunderstandings, recall my expectations for your performance: A minimum of 18 completed, high-quality articles per year; consistently constructive, helpful, collegial behavior supportive of the overall editorial effort of the magazine." The

memorandum states "you have asked for a six-month sabbatical and we would like to accommodate your request. Until a means of covering your workload is found, however, I expect you to continue working to meet your performance goals. Upon returning from a sabbatical, my expectations for you will remain the same." The memorandum reveals Complainant received the memorandum.

A review was conducted of a performance review dated August 13, 1999, for the period February 1998-August 1999 (PT issues March '98-Sep. '99)-incl. 6-mo. Sabbatical. The performance review reveals an overall rating of 2.8 that was changed on August 20, 1999 to 3.0. The performance review states Complainant "was asked to produce 18 high-quality articles, and he actually produced 13.5, which is unacceptable. The performance review states Complainant repeatedly engaged in disruptive and counterproductive behavior, damaging a collegial office climate and thereby undermining the editorial effort of Physics Today. Such behavior is unacceptable." The performance review states the following as examples of Complainant's unacceptable behavior. Complainant was removed from working on the PT anniversary issue, and produced a very unbalanced set of decadal excerpts strongly centered on political issues, whereas Complainant had been directed to focus on physics excerpts. Complainant wrote a 19 page response to his last performance review with another 38 pages of addenda (as he is entitled to do), and circulated it to PT staff members. The performance review reveals that Complainant signed the review on August 19, 1999.

A review was conducted of a memorandum dated August 19, 1999, from Complainant to his Supervisor. The memorandum reveals as its subject "My 1999 performance review (dated 13 August 1999 and signed by you on 17 August 1999)." The memorandum states "I was disappointed to find that you wrote my 1999 performance review in the same punitive spirit as my 1998 review. Like my 1998 review, the present review understates or completely leaves out my accomplishments and does not mention the praise that I have received for my work. At the same time, it contrives deficiencies and plays them up. I had thought you had gotten beyond that."

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Investigation disclosed that Complainant's overall performance rating for the period February 1997-January 1998, after he filed his internal Title VII based complaint was the same as his rating for the period February 1994-January 1995. Investigation disclosed that Respondent has raised concerns regarding Complainant's productivity since before Complainant filed his internal Title VII based complaint.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations.

The second focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complaint he was banned from having private conversations with co-workers (White).

A review was conducted of a memorandum dated September 26, 1997, from Respondent to Complainant. The memorandum states "We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated."

An interview was conducted with an Editorial Assistant. This witness stated that she has been employed with Respondent and remembers Complainant but knows nothing about the circumstances surrounding his departure from Respondent.

An interview was conducted with a former employee. This witness stated that he worked for Respondent from July 1995 to March 2000, and left because he was disgruntled with the way Respondent was being managed. This witness stated that he and Complainant had adjoining offices and worked closely together. This witness stated that Complainant in the fall of 1996 was raising issues with management concerning compliance with Respondent's Affirmative Action Plan. This witness stated that he saw a note given to Complainant that he considered a "gag order." This witness stated that the note told Complainant that his job was at risk, and that he should stop being counter-productive. This witness stated that a co-employee received the same note. This witness did not state that he was adversely affected because of his participation in protected activity. This witness stated that he believes Complainant was affected because he was considered the ring- leader.

An interview was conducted with another former co-employee. This witness stated that she was employed with Respondent from September 1989 to November 1999. This witness stated that Complainant started having trouble when he started questioning

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Respondent's adherence to its Affirmative Action Plan. This witness stated that she and other employees participated in questioning Respondent's adherence to its Affirmative Action Plan. This witness stated that she saw a note given to Complainant and another co-employee that she considered a "gag order" that stated they were not to say anything that was counter productive.

This witness stated that over the years her ideas got dismissed, but as she became more assertive she got more respect. This witness stated that in 1995, she was receiving less pay than Editors (Non-Asian American). This witness stated that she complained that she was being paid less because she was the only Asian American, and immediately received a promotion and pay raise.

This witness stated she was not adversely affected for her participation in protected activity. This witness stated that she believes that she was not adversely affected because she was less assertive than Complainant.

An interview was conducted with another former co-employee. This witness is the co-employee cited above as receiving the "Gag Order." This witness stated that he was employed with Respondent from 1991 to May 1998. This witness stated that he resigned his position with Respondent because he was unhappy about how poorly things were managed. This witness stated that Respondent's parent company did not adequately support it financially. This witness stated that sometime in 1997, Respondent's CEO held a meeting during which he raised issues regarding lack of financial support, lack of equipment, and poor management. This witness stated that the CEO became very annoyed. This witness stated that after the meeting, Respondent's Publisher pulled him aside and told him not to criticize upper management in public, and that issues like those he raised could only be raised in private. This witness stated that the same thing was imposed on Complainant. This witness stated that Complainant could only raise things related to articles, and nothing related to the work place, how the place was run, or about the culture of the place.

This witness stated that Complainant wanted the work place to operate in more of a collective fashion instead of receiving orders from management. This witness stated that at one time Complainant raised issues of affirmative action (minorities under represented). This witness stated that he was not involved in the affirmative action issues raised by Complainant.

This witness stated that once at a company retreat, Complainant was yelled at to be quiet. This witness stated that as a result of the issues that he did raise, he was treated more harshly. This witness stated that meetings he participated in became more acrimonious. This witness stated that in some respects he was treated the same way.

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Page 7

This witness stated that a group of them were regarded as troublemakers and agitators. This witness stated that part of his duties were management, so sometimes he was looked at as being outside the group and treated better. This witness stated that when he was seen as being inside the group he was treated more harshly.

This witness stated that the reason for Complainant's termination was bogus. This witness stated that Complainant was either terminated because management did not like the language in the book, or because management calculated to get rid of a thorn in their side (Complainant raised affirmative action issues and pushed for collective management).

A review was conducted of the memorandum dated September 26, 1997, from Respondent to Complainant. The memorandum states the following:

"We welcome constructive and productive contributions from you, but behavior by you that we consider destructive and counterproductive will no longer be tolerated. Your continued interruption at our retreat, after you were instructed to hold your questions and comments until the discussion segment of the agenda, is an example of what we mean. The continuation of such behavior on your part, in the office or at any work-related activity, will not be tolerated."

The memorandum reveals that Complainant was not banned from having private conversations with co-workers.

Investigation disclosed that some of Complainant's co-workers participated in protected activity along with Complainant, but were not adversely affected.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations that he was banned from having private conversations after filing an internal Title VII based complaint.

The third focal point of the Commission's investigation centers on Complainant's allegation that after filing an internal Title VII based complaint he was terminated.

Investigation disclosed that Respondent has an Equal Opportunity in Employment Policy that states Respondent will not discriminate on the basis of any protected characteristic.

Investigation disclosed that Respondent has a General Rules of Conduct Policy. The Policy states that all employees are employed at-will and can be terminated with or without cause and with or without notice. The Policy reveals the following conduct is included but not limited to the unauthorized behavior that is subject to discipline up to

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Page 8

and including discipline: misuse of confidential information, falsifying records, illegal conduct, and solicitation of any kind by an employee of another employee while either is on working time.

A review was conducted of Complainant's personnel file. The review did not reveal written termination notice. The review did not reveal any written Title VII based complaints.

A review was conducted of a letter dated November 5, 1997, to Respondent's CEO from Complainant. The letter reveals Complainant made an internal Title VII based complaint. The letter reveals Complainant and other staff members at a staff meeting in November 1996 raised Title VII based concerns.

A review was conducted of the Introduction to the cited book Complainant wrote. The introduction states "this book is stolen. Written in part on stolen time, that is, I felt I had no choice but to do it that way."

An interview was conducted with a former employee. This witness stated that he held the position of Associate Editor, and his primary function was writing news articles. This witness stated that he did free lance work with Respondent's formal permission. This

witness stated that because he did not have a 9-5 job, there was no real distinction between when he was working on company time or his own time.

An interview was conducted with another former employee. This witness stated that he held the position of Associate Editor, he did free lance work. This witness stated that he never wrote his free lance articles on company time, he only wrote them home at night.

Interviews were conducted with seven similarly situated employees (5 current employees, 2 former employees). Six of the employees stated that they had not written books or periodicals on company time. One of the employees stated that in order to free lance an employee must get clearance from Respondent, and must free lance on their own time. This employee stated that any work done for an outside publication on company time is considered unethical in this business. Two witnesses stated that they know of employees who have written books or periodicals on company time, but they do not know if Respondent was aware of same. One witness stated that he has a colleague currently writing a book, but his colleague changed his work schedule to a three-day shift to have time to write. This witness stated that employees wrote free lance articles, but on their time. One witness stated that he did outside work, but not on company time.

The Commission in a Title VII Retaliation complaint under Sec. 704(a) must establish that the charging party either opposed an unlawful practice or participated in the

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Page 9

investigation of same. The Commission must establish that the Respondent had knowledge that the charging party engaged in the protected activity (this burden was satisfied, Complainant filed an internal Title VII based complaint on 11-5-97). Second, there must have been an adverse action taken against the charging party in close proximity to the time the charging party engaged in the protected activity (this burden was satisfied-Complainant was terminated 5/31/00). Finally, there must be proof of a causal connection between the protected activity (filed complaint) and the adverse employment action (Complainant's termination on 5/31/00) taken against the charging party (this burden was not satisfied).

In order to establish unlawful retaliation, there must be proof that the Respondent took an adverse action because the charging party engaged in protected activity. Proof of this retaliatory motive can be through direct or circumstantial evidence. A violation is established if there is circumstantial evidence raising an inference of retaliation and if the Respondent fails to produce evidence of a legitimate, non-retaliatory reason for the challenged action, or if the reason advanced by the Respondent is a pretext to hide the retaliatory motive.

An initial inference of retaliation arises where there is proof that the protected activity and the adverse action were related. Typically, the link is demonstrated by evidence that: (1) the adverse action occurred shortly after the protected activity, and (2) the person who undertook the adverse action was aware of the Complainant's protected activity before taking the action. An inference of retaliation may arise even if the time period between the protected activity and the adverse action was long, if there is other evidence that raises an inference of retaliation.

Even if the Respondent produces evidence of a legitimate, nondiscriminatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide the true retaliatory motive. Typically, pretext is proved through evidence that the Respondent treated the Complainant differently from similarly situated employees or that the Respondent's explanation for the adverse action is not believable. Pretext can also be shown if the Respondent subjected the Complainant's work performance to heightened scrutiny after he engaged in the protected activity.

Based on evidentiary findings, there is insufficient evidence to support Complainant's allegations that he was terminated because he filed a Title VII based complaint.

Based on overall evidentiary findings, there is insufficient evidence to support Complainant's allegations that Respondent retaliated against him in the terms, conditions (performance reviews), privileges (private conversations with co-workers), and termination of his employment on May 31, 2001.

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Page 10

This Determination concludes the staff's processing of the subject charge.

Should Complainant have additional information which Complainant feels may substantially alter my decision in this matter, Complainant may write to me within thirty (30) days from the date of this letter and request that this case be re-opened, providing such information or evidence.

Should the Complainant feel dissatisfied with this decision and have no additional information or evidence to offer, Complainant may in accordance with the Rules of Procedure governing the Prince George's County Human Relations Commission appeal the decision of the Executive Director, within thirty (30) days from the date of this letter by setting forth reasons for said appeal in a written request to:

Samuel N. Fontaine
Chairperson
Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774

This decision constitutes a final action by this Commission concerning your complaint if no appeal is received within thirty (30) days of this date.



William A. Welch, Sr., Ed.D.
Executive Director
Prince George's County
Human Relations Commission

6/13/02
Date

Cc: Complainant

S 000729

Law Offices
FINKELSTEIN & HORVITZ, P.C.
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July 16, 2002

VIA OVERNIGHT DELIVERY

Samuel N. Fontaine
Chairperson
Prince George's County
Human Relations Commission
1400 McCormick Drive, Suite 245
Largo, MD 20774


Dear Mr. Fontaine:

Please find enclosed a copy of Mr. Jeff Schmidt's request to reconsider the letter of determination, dated June 17, 2002. We are transmitting a copy to you directly in an effort to fully preserve Mr. Schmidt's appeal rights with respect to that determination. The exhibits that are referenced in the attached letter have been transmitted directly to Mr. Welch.

Please do not hesitate to call if you have any questions.

Respectfully submitted,

FINKELSTEIN & HORVITZ, P.C.

By: 
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Enclosures
cc: William Welch

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VIA OVERNIGHT DELIVERY

July 16, 2002

William A. Welch, Sr., Ed.D.
Executive Director
Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774

Re: Schmidt v. The American Institute of Physics

Dear Dr. Welch:

This letter is submitted on behalf of Jeff Schmidt. He is seeking reconsideration of a determination that was rendered on June 17, 2002. For the reasons set forth below, Mr. Schmidt asks the Commission to reopen his case and consider additional evidence.

I. Introduction

On June, 17, 2002, the Prince George's County Commission on Human Relations issued a letter of determination in the case Schmidt v. American Institute of Physics. In that case, Jeff Schmidt ("Schmidt") alleges that his former employer, the American

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Institute of Physics ("Company"), retaliated against him for challenging the Company's failure to adhere to Equal Employment Opportunity employment practices in violation of Title VII. Upon review, the Commission found that there was insufficient evidence to support Schmidt's allegations that the Company retaliated against him in the terms, conditions, privileges and termination of his employment. However, a proper and careful consideration of the evidence establishes that Schmidt successfully established a *prima facie* case of Title VII violations that the Company failed to rebut. Furthermore, in light of new evidence that will be introduced herein, as well as the public policy underlying Title VII, the Company clearly should be held liable for unlawful retaliatory conduct. Based on the evidence presented previously and herein, this case should be reopened.

Schmidt is a white male who had worked for 19 years as a staff editor at *Physics Today* magazine, a Company publication, before his employment was terminated on May 31, 2000. While employed at *Physics Today*, Schmidt actively challenged the Company's all-white employment practices at the professional level. Schmidt organized with other employees of the Company to form a coalition of employees who disagreed with what they considered to be discriminatory employment practices.¹ By far, Schmidt was the most outspoken member of this group. In fact, on November 5, 1997, Schmidt took the initiative to file an internal Title VII based complaint, even though Schmidt himself is not a member of any protected class. Schmidt alleges that following this action, the Company retaliated against him in a number of ways that adversely affected his employment, and that finally resulted in the termination of his employment on May 31,

¹Since *Physics Today* relocated to College Park, Maryland, in 1993, it has hired exclusively white professionals.

2000.

The law as stated in the Commission's letter of determination is as follows: In a Title VII claim of retaliation under Sec. 704 (a), the Commission must first establish that the charging party either opposed an unlawful practice or participated in the investigation of the same. The Commission must establish that the Respondent had knowledge that the charging party engaged in the protected activity. As the Commission correctly noted in its letter, this burden was satisfied when Schmidt filed an internal Title VII complaint on November 5, 1997. Furthermore, Schmidt openly challenged the Company's failure to interview or hire minority candidates on numerous occasions, and openly organized with co-workers on this issue. The Company was well aware of these activities. In addition to the Title VII complaint, Schmidt's activities included the following:

- (1) on October 4, 1996, Schmidt complained to the *Physics Today* advisory committee about unjustified salary differentials between the one minority professional and the white professionals;
- (2) on November 15, 1996, Schmidt led the effort by a few staff members to request in writing that the company change its hiring practices to "increase diversity of *Physics Today* staff";
- (3) on November 26 and 27, 1996, Schmidt and a co-worker successfully pressured the company into sending a job-opening announcement to minority group organizations and gave the entire *Physics Today* staff a progress report;
- (4) in April 1997, at a *Physics Today* staff meeting, Schmidt argued strongly that promising minority applicants should be interviewed for an open position; *Physics Today* publisher Charles Harris and Editor Stephen G. Benka said no;
- (5) on October 17, 1997, Schmidt met with the *Physics Today* advisory committee and objected to the magazine's discriminatory employment practices and failure to live up to its claim that it is an affirmative action employer;
- (6) on November 7, 1997, Schmidt suggested to American Institute of Physics Executive Director and Chief Executive Officer Marc H. Brodsky that Brodsky speak with the only minority group member of the *Physics Today* staff about discrimination at the magazine (Brodsky failed to do so);
- (7) on March 20, 1998, Schmidt met with Mr. Brodsky and pressed him to conduct the equal opportunity staff training that he had promised (Brodsky failed to do so); and

- (8) on April 27, 1998, Schmidt circulated to 12 co-workers a memo, the largest section of which detailed the company's resistance to equal opportunity. (See the chronology entries for these dates.)

Thus Schmidt engaged in extensive activism in furtherance of Title VII policies.

The law also states that there must have been an adverse action taken against the charging party in close proximity to the time the charging party engaged in the protected activity. Again, the Commission correctly found that this burden had been satisfied when Schmidt was terminated on May 31, 2000. Furthermore, the Company acted adversely against Schmidt and his co-workers on many other occasions. In one example, Schmidt's supervisor insisted on being included in Schmidt's private conversations with his co-workers, and stated, as his reason, that he wished to prevent any further organizing by Schmidt. The Company was made aware at the executive level of the manager's statement, and did nothing in response. Schmidt informed Company executives both verbally and in writing of his belief that the Company was banning his private conversations with co-workers. In no way did the Company dispute Schmidt's understanding of the Company's policies. Therefore, the Company ratified and approved the ban on Schmidt's private conversations with co-workers. This conduct clearly sent a message to Schmidt's co-workers that challenging the Company's employment practices was actively discouraged by the Company. Other co-workers who took issue with the employment practices felt hostility and pressure to an extent that caused them to leave the Company. This is further evidence of the Company's unlawful activity.

The Company also acted adversely toward Schmidt by penalizing him through his performance reviews. Significantly, two such reviews prevented Schmidt from obtaining the salary increase that he had reasonably expected. This constituted retaliatory

conduct by the Company. Again, the Company has failed to effectively rebut the presumption of a Title VII violation. Rather, the evidence shows that any reason offered by the Company in response to this action is purely pretext.

Finally, the law states that there must be proof of a causal connection between the protected activity (filed complaint) and the adverse employment action. The Commission found that the burden was not satisfied with respect to this element. However, the evidence shows that the reason proffered by the Company to explain its conduct is clearly pretextual. A proper consideration of the evidence shows that this element has been met. Furthermore, in light of new evidence that will be presented herein, as well as a proper consideration of the public policy that underlies a Title VII claim of retaliation, this case should be re-opened and reversed in favor of Schmidt and against the Company.

The Evidence Presented Establishes a Causal Connection between Schmidt's Protected Activity and Respondent's Adverse Employment Action in Clear Violation of Title VII.

To establish unlawful retaliation, there must be proof that the Respondent took an adverse action because the charging party engaged in a protected activity. Proof of a retaliatory motive can be through direct or circumstantial evidence. A violation is established if there is circumstantial evidence raising an inference of retaliation and if the Respondent fails to produce evidence of a legitimate, non-retaliatory reason for the challenged action, or if the reason advanced by the Respondent is a pretext to hide the retaliatory motive.

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Here, the Commission correctly notes in its letter of determination that the evidence establishes an inference of retaliation, in that the adverse action (termination of employment) occurred shortly after the protected activity (filing complaint) and that the Respondent was aware of the protected activity before taking the action. Therefore, the Commission recognizes that a prima facie case of unlawful retaliation with respect to Schmidt's employment has been established.

Significantly, there is an abundance of direct and circumstantial evidence that establishes that Respondent violated Title VII by retaliating against Schmidt in the terms, conditions, privileges, and termination of his employment. Accordingly, where there is an inference of retaliation, the burden shifts to the Respondent to produce evidence of a legitimate, nondiscriminatory reason for the challenged action. Respondent has failed to meet this burden.

- II. Respondent has failed to produce evidence of a legitimate, non-discriminatory reason for any of its adverse actions against Schmidt.
- A. The evidence establishes that Respondent retaliated against Schmidt in the terms, conditions and privileges of his employment.

The Ban.

Schmidt alleges that Respondent banned his private conversations with co-employees beginning on January 28, 1998. Specifically, Schmidt alleges that on two occasions on January 28, 1998, his supervisor, Stephen G. Benka interrupted him as he was speaking privately with a co-worker. In the first instance, Mr. Benka saw Schmidt in a co-worker's office, opened the door, entered the room and asked if he could join the conversation. Schmidt and his co-employee said okay. Later, when Schmidt was speaking with a co-worker by telephone, Mr. Benka interrupted and demanded to be

included in the conversation. Schmidt and his co-worker asked why; Benka announced to Schmidt that he was forbidding all private conversations between staff members at work. It is alleged that Mr. Benka announced that all future conversations between staff members had to be open to management supervision. When asked why, he said something to the effect of "I don't want anything like what happened last year to happen again." Schmidt alleges that he understood this statement to refer to the workplace organizing regarding hiring practices that had taken place the previous year in which Schmidt had played a leading role. Furthermore, the Company was aware that Schmidt understood this statement to be a reprisal for his workplace organizing. On April 27, 1998, Schmidt wrote an appeal to two executives of the Company in which he complained about the ban on his private conversations in the workplace and described in detail the announcement made by Mr. Benka. The Company failed to address this aspect of the appeal, and made no attempts to correct Schmidt's understanding that the Company's policy was intended to discourage Schmidt's workplace organizing. This action alone would create a hostile work environment sufficient to sustain an action under Title VII. Clearly, the right to engage in private conversations with co-workers is a term, condition and privilege that Schmidt and other similarly situated employees enjoyed at the workplace. Once the Company became aware that Schmidt was employing such privileges to challenge the Company's employment practices and to encourage his co-workers to do the same, the Company communicated its intention to monitor and prevent any further use of such privileges. Furthermore, Mr. Benka's policy was ratified and approved at the executive level.

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Importantly, Schmidt's allegations that he was subject to retaliation because he openly challenged the Company's employment practices are supported overwhelmingly with corroborating witness testimony. Within the Commission's letter of determination alone, the following statements are cited:

- "The witness stated that Complainant in the fall of 1996 was raising issues with management concerning compliance with Respondent's Affirmative Action Plan."
- "This witness stated that he believes Complainant was affected because he was considered the ringleader."
- "Complainant started having trouble when he started questioning Respondent's adherence to its Affirmative Action."
- "This witness stated that she believes that she was not adversely affected because she was less assertive than Complainant." (Emphasis added).
- "This witness stated that at one time Complainant raised issues of affirmative action" (minorities under-represented).
- "The witness stated that a group of them were regarded as troublemakers and agitators."

The evidence overwhelmingly establishes that the message sent by this Company to its employees is intolerable and undermines the aims of the Civil Rights Act of 1964. The Company's conduct in discouraging Schmidt and others from speaking out against its employment practices is exactly what the retaliation provision of Title VII seeks to prohibit. It is rare indeed, that any employee, particularly one who does not belong to any protected class, would openly challenge an employer's failure to practice equal employment opportunity. A Company must not be permitted to so blatantly seek to silence or discourage any employee from attempting to further the aims of such an important statute as the Civil Rights Act of 1964.

Although the facts described above sufficiently establish a prima facie case that the Company retaliated against Schmidt in the terms, conditions and privileges of his employment by instituting a ban on his private conversations in the workplace, In support of this position, the Commission is encouraged to consider the following:

In its earlier determination, the Commission evidently confused two different events -- the gag order of September 26, 1997, and the ban of January 28, 1998 on Schmidt's private conversations with co-workers. Specifically, the Commission relied upon and quoted from the gag order memorandum in its finding that Schmidt was not banned from having private conversations after filing an internal Title VII based complaint. See Letter of Determination p. 7.

The Commission correctly notes that the gag order was not a ban on Schmidt's private conversations with co-workers. Rather, the gag order stated that behavior that the Company considered "destructive and counterproductive" would not be tolerated. When in context, this communication revealed the Company's complete intolerance of any comments by Schmidt regarding the treatment of persons within protected classes. [its all-white employment practice as counterproductive.] (See, for example, the entries for April 1997 and October 17, 1997 in the chronology dated October 3, 2000, which Schmidt submitted to the Prince George's County Human Relations Commission on 21 November 2000.) As a result, Schmidt, and indeed, many other corroborating witnesses viewed the memo as a "gag order." Significantly, under pressure from staff, the Company rescinded the memo on December 2, 1997.

The ban on Schmidt's private conversations was imposed five months after the gag order was issued. Evidence of the ban is overwhelming: 8

- The enclosed contemporaneous letter (Exhibit B, dated 4 February 1998) from Schmidt to a co-worker on vacation describes in exhaustive detail the imposition of the ban on private conversations.
- The enclosed statements by co-workers describe the ban on private conversations. (Exhibit C, See pages 6, 7 and 8 of the 11-page document, dated May 2002, in which a human rights committee of scientists reports the findings of its investigation into Schmidt's firing. This is new material.)
- The enclosed document of dated April 27, 1998, explicitly appeals the ban to two top executives of the Company. (Exhibit D See pages 17-18 of the 57-page document of April 27, 1998. This is new material.)
- Schmidt also appealed the ban orally, to one of the top executives, on June 25, 1998. (See the chronology entry for that date.)
- Co-worker Paul Elliott, shortly after the ban on private conversations was imposed, appealed to *Physics Today* publisher Charles Harris to end the ban. (Harris took no action.)
- When Schmidt's supervisor learned that Schmidt had discussed a retaliatory performance review with his co-workers privately, he demanded that Schmidt name the co-workers with whom he had spoken. The co-workers did not want their names released, and their supervisor's unrelenting investigation of their private conversations with Schmidt intimidated them and served to reinforce the ban on Schmidt's private conversations with co-workers. (See record of the August 1999 "probe." This is new material.)

In light of the above evidence, the Commission erred when it found that there was never any ban on Schmidt's private conversations. That finding is not supported by the evidence and should be reversed. That ban, which remained in effect until Schmidt was dismissed, by itself warrants the issuance of a complaint and should not be tolerated by the Prince George's County Human Relations Commission.²

² On a related issue, the Commission erred in its conclusion that "some of Complainant's co-workers participated in protected activity along with Complainant, but were not adversely affected." In fact, these co-workers, -- Graham Collins, Jean Kumagai and Paul Elliott -- were not targeted individually to the same extent that Schmidt was, but they were adversely affected by the repressive workplace atmosphere that the Company imposed in response to their protected group activities. In fact, when

- B. The evidence establishes that Respondent retaliated against Schmidt when he was given a retaliatory performance review.

The Review.

When reviewing a claim of retaliation under Title VII of the Civil Rights Act, the evidence is considered cumulatively. A single act may not, by itself, always amount to a violation of Title VII. However, that same act, when viewed in light of the surrounding circumstances, may prove quite significant in evaluating a retaliation claim. Here, a review of the circumstances surrounding the negative performance reviews received by Schmidt in 1998 and 1999 strongly supports an inference of retaliation that Respondent has failed to effectively rebut.

Schmidt alleges that the Company retaliated against him with inaccurate, unfair and punitive performance evaluations. As an example, Schmidt refers to a performance review dated March 12, 1998. At the time that this review was given, Schmidt and his co-workers believed that the review was a reprisal, and considered it to be "grossly inaccurate, unfair and punitive."

Referring to that performance review (in a document that wasn't available to the Commission's investigator), co-worker Kumagai notes that "one year, management lowered [Jeff's] rating from 'exceeds job requirements' to 'meets job requirements,'

management stepped up its repressive efforts, all three of these co-workers resigned in short order, after many years of employment with the Company. It is telling that Collins and Elliott left without even arranging other employment, and explicitly cited intolerable management practices by the Company. Kumagai arranged other employment before resigning, but attributes her resignation to the repressive/hostile environment imposed by management and to the Company's hypocrisy about equal employment opportunity.

despite the lack of evidence that the quality or quantity of Jeff's work had fallen. Jeff contended, and I agree, that they were punishing him for his workplace activism." See Exhibit C, page 5.

Schmidt's written rebuttal to the review proves that Schmidt's position at the time was that this review was a reprisal for Schmidt's protected activity. Never before during Schmidt's many years at the Company had he felt it necessary to write a rebuttal to a performance review. See Exhibit D. This single act, when viewed in light of the surrounding circumstances, is significant evidence of retaliatory conduct.

The Commission's review of Schmidt's 1999 performance review unfortunately overlooks the evidence of reprisal. Significantly, the performance review criticizes as "unacceptable" the fact that Schmidt wrote and circulated to the staff a memo that "dwelled at length on issues not related to his job." The paramount issue that the memo addressed was the Company's discriminatory employment practices. Based on this criticism, the review gave Schmidt a very low rating in the area titled "Support the editorial effort of PT,"³ that adversely affected his salary. And as the chronology notes, Schmidt's supervisor criticized him harshly for circulating the memo, telling him, "You are lucky you still have your job after doing that." See Exhibit A.

The letter of determination, on pages 3-5, quotes management statements in Schmidt's performance reviews at great length, and yet fails to evaluate the accuracy of the statements therein or the typical manner in which other employees were reviewed by the Company. The workload numbers and statements quoted are largely inaccurate, as

³ A rating of 1.5 in area 3

detailed, for example, in the document of April 27, 1998. These management statements should have been subjected to critical review in light of the document of April 27, 1998 and the performance reviews of co-workers.

An examination of the performance reviews of co-workers, for example, would reveal that a common management theme on performance reviews at the Company was, "What more can you do for us?" The Commission failed to appreciate this fact when it stated, "Investigation disclosed that Respondent has raised concerns regarding Complainant's productivity since before Complainant filed his internal Title VII based complaint." This observation misses an important point. The Company raised the issue of productivity for 19 years, but only took a "hard line" on it after Schmidt complained about all-white hiring practices. The performance review covering the period February 1996 - January 1997 illustrates how productivity had been treated in the past: as just one of many factors for judging an employee. Significantly, the review, dated February 13, 1997, was conducted two months before Schmidt confronted management about its failure to interview the minority job applicants whom management had identified as "very promising." Despite the fact that managers wrote that Schmidt failed to meet his productivity quota, they nevertheless gave him an overall rating of 4 -- "Exceeds job requirements." (See letter of determination, page 3, middle paragraph.)

Significantly, Title VII requires a finding of pretext where similarly situated employees are not subjected to the same adverse actions as the Title VII complainant. Here, the company clearly took different action with Schmidt than it did with other similarly-situated employees. Therefore, the Company's explanations for its adverse actions must be regarded as pretext.

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For example, a look at the performance reviews of co-workers also would reveal that when the Company was *truly* concerned about an employee's productivity, it took action outside of performance reviews -- by putting the employee on probation. Co-worker Bertram Schwarzschild, for example, was put on probation for low productivity. It is telling to compare the Company's treatment of Schwarzschild and its treatment of Schmidt. Schwarzschild's employment at *Physics Today* paralleled Schmidt's in starting date, job title and salary. The Company considered Schwarzschild's productivity to be deficient enough to warrant probation; Schmidt was never put on probation.

Schwarzschild openly spent office time on personal activities, including rehearsing lines for plays, making personal telephone calls, debating controversial current events at length with co-workers, writing fiction on his office computer, sending personal e-mail, surfing the Web, playing computer solitaire and so on; Schmidt devoted himself almost exclusively to the needs of the Company when he was in the Company's offices. Notably, however, Schwarzschild displayed a submissive attitude toward management and openly seethed with prejudices against minorities, women, gays and so on; Schmidt confronted management with demands for fair treatment of minority group members. Schwarzschild is still employed at *Physics Today*; Schmidt, of course, is not. Schwarzschild is allowed to count short "picture caption" stories as "big-ticket items" when it comes to meeting his annual work quota. ("Picture caption" stories take one to a few days to complete, whereas the "big-ticket items" take weeks.)

- C. The evidence establishes that Respondent retaliated against him when the Company terminated his employment on May 31, 2000.

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The letter of determination mistakenly concludes that the Company had no retaliatory motivation when it decided to fire Schmidt, whom the Company considered to be an unwelcome advocate for minority rights and had already tried to silence with an escalating series of repressive measures. Thus the Commission mistakenly accepts as free of pretext the Company's stated reason for firing Schmidt -- his supposed failure to "strive to meet Respondent's productivity standards." (See letter of determination, page 2.)

As stated before, at the time Schmidt was fired, he had just fulfilled his entire annual work quota two months ahead of time. The law provides in pertinent part, "Even if the Respondent produces evidence of a legitimate, nondiscriminatory reason for the challenged action, a violation will still be found if this explanation is a pretext designed to hide the true retaliatory motive." Yet, the Commission concludes that there was no violation.

The Commission's review of Schmidt's personnel file overlooks the most important document concerning the issue of productivity: the document that states the Company's productivity expectations that were in effect during the months leading up to Schmidt's dismissal. This document is a written agreement, approved by Schmidt and signed by a director of the American Institute of Physics, specifying the amount of work Schmidt would be required to do annually and what Schmidt would be paid in return for doing that work. (See agreement dated 14 September 1999, submitted to the Commission on 21 November 2000.) At the time Schmidt was fired, he had just fulfilled his entire annual work quota in ten months' time. That is, he was two months ahead in

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his work. Clearly, alleged concerns about Schmidt's productivity cannot account for his dismissal.

Based on this fact alone, the Commission's finding was based upon the erroneous conclusion that Schmidt was actually fired for conduct that was unrelated to his protected activity. This finding is contradicted and undermined by the fact that co-workers with more serious productivity deficiencies were only put on probation and not fired, and the fact that Schmidt *exceeded* the Company's productivity standards, having completed a year's worth of work in ten months' time at the time of his dismissal.

The Company may defeat a finding of pretext only where the Title VII complainant is treated the same as similarly situated employees under like circumstances. } Ample testimony by fellow co-workers ^{shows} to ~~show~~ that such employees were not treated similarly. } In fact, at the time Schmidt was writing the book, other co-workers were also engaged in freelance work that the company knew about. These coworkers were not disciplined in any way. See Exhibits F and G.

Significantly, the State of Maryland Department of Labor held a hearing in Schmidt's case and took testimony from both the Company and Schmidt. The Department found that the Company had presented insufficient evidence to back its charge that Schmidt had spent company time writing his book and refuted the Company's charge of employee misconduct. The Company did not appeal the State's finding.

Also significant are the findings of an investigation by a human rights committee of scientists, co-chaired by a professor at the University of Maryland, College Park. See

Exhibit C. The scientists determined, among other things, that "What is not possible is that Schmidt was fired for the reason stated by AIP." See Exhibit C, page 3.

The Commission's view that the Company's action was free of retaliatory motivation also contradicts the assessment of many organizations and hundreds of scientists with long-standing knowledge of the American Institute of Physics. These scientists know the subculture of physics, and they recognize a pretext within it when they see it.

The letter of determination's discussion of whether or not Schmidt was treated differently from other editors is fundamentally flawed, because it is based on a misreading of Schmidt's book and on the false assumption that the Company expected employees to spend 100 percent of their time doing Company work. (Pages 7-9 of the letter of determination.) The opening line of Schmidt's book is obviously a dramatization, and that is why he immediately explains to the reader what it means. Thus, in the book's opening paragraph, Schmidt states that "written in part on stolen time" means "spending some office time on my own work." (This is discussed on page 5 of Exhibit C.) The Commission confuses office time and Company time (or work time), and this confusion causes it to misinterpret all the statements by co-workers (most of page 8 of the letter of determination). During Schmidt's 19 years at the Company, it was common practice for employees in the *Physics Today* division to spend some of their time in the office on things other than Company work. Thus, while co-workers openly engaged in typical work-break activities such as making personal telephone calls, exchanging personal e-mail, surfing the Web, conversing with co-workers and so on, Schmidt spent some time working on a book. No one needed formal permission to engage in any of these

activities, because they did not interfere with Company work, affect the amount of Company work that was done, or affect the timeliness of the Company work. In fact, most of Schmidt's company work was performed at home, on a computer that was purchased by Schmidt and the company and was wholly owned by Schmidt a year after the purchase. Schmidt typically spent four days every week at his home office. Thus, it is clear that Schmidt and other employees were treated as professionals and provided with the privileges of typical professionals. They were expected to complete their work and were not punching time clocks or strictly regulating their work hours. When taken in context, Schmidt's work on a book was entirely consistent with Company practices.

Finally, the Commission failed to accurately interpret the statements of many employees. For example, the letter of determination apparently makes a significant error in summarizing the statement of the former employee discussed in the middle of page 8. The letter says, "This witness stated that he did freelance work with Respondent's formal permission." In fact, this employee never told the Commission that he had written permission to do freelance work in the office. Nor did he tell the Commission that he had special permission not granted to his colleagues. He had a verbal statement of Company policy, that he understood to apply to all staff editors at *Physics Today*, including Schmidt. See Exhibit F.

This policy is further supported by the statement by former co-worker Christopher Mohr. See Exhibit G.

By failing to take into account the written chronology of events, the Commission unfortunately misses other ways in which Schmidt was treated differently from his co-workers after he confronted management on the issue of equal opportunity. For

example, Schmidt and a co-worker both requested permission to carry over unused vacation time from one year to the next. Schmidt's request was denied, while the co-worker's request was granted. The co-worker was instructed not to tell anyone. (See chronology entry of 9-10 November 1999.)

The fact that the Company never asked Schmidt about the statement in his book indicates a lack of interest as to the truth of the Company's purported assumptions. It is very telling that despite Schmidt's 19 years of service to the Company, his supervisors did not ask him even a single question about his work on the book, even though they had no idea how much office time, if any, he had spent on it. This is strong circumstantial evidence of an eagerness on management's part to get rid of Schmidt, an employee who had openly raised embarrassing questions in the workplace.

III. Conclusion

The Commission should reopen this case to consider the new, overlooked and challenged evidence, and should issue a complaint.

Respectfully submitted,

FINKELSTEIN & HORVITZ, P.C.

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EXHIBIT LIST

1. Exhibit A: Physics Today magazine workplace chronology, October 3, 2000.
2. Exhibit B: Contemporaneous letter detailing the ban on Schmidt's private conversations with co-workers, February 4, 1998.
3. Exhibit C: Scientists' human rights committee report, May 2002.
4. Exhibit D: 57-page memo of April 27, 1998.
5. Exhibit E: Documentation of probe into private conversations, August 1999.
6. Exhibit F: Message from witness William Sweet to PGC Human Relations Commission, May 9, 2002.
7. Exhibit G: Message from co-worker Christopher Mohr to PGC Human Relations Commission, May 15, 2002.

4 February 1998

Hi Graham,

It sounds like you are in a great place, a different world physically and in spirit. News travels far and fast, and so I see that you already know that your coworkers have been treated to a "down under" experience of a very different sort. The description of events that you received was a good one, in my opinion, and shows the skills of a good reporter. I'll give you my report here, because it contains some additional information.

On Thursday 22 January 1998 I met with Charles Harris to ask him to get Stephen Benka off my case. Benka had been pressuring me to stop doing anything that takes up any support staff time at all. I told Harris that support staff can contribute a lot to making the editorial work go well, and that his apparent new policy for support staff work -- that it should give priority to advertising and other revenue-producing work over editorial work -- was bad for the magazine. When Judy was part of the support staff, most of her time was shifted to the Buyers' Guide, which was brought in-house to save money. Now they are shifting more and more of Rita's time to advertising work. And they aren't replacing the lost editorial support. Instead, they are pressuring editorial staff to take on more work. Management philosophy seems to be: Why pay \$15 an hour for clerical work when you can pay \$30? Their real philosophy, of course, is simply to get the editorial staff to do more.

I told Harris that behind all this is the way his salary is structured -- tied to reducing the magazine's budget deficit. To my claim that his salary structure is distorting our priorities, he said that he doesn't always do what is best for his salary. As proof, he pointed out that we usually don't run four feature articles in the magazine. He then quickly changed the subject, realizing, I think, that he has never revealed that his salary is tied to upping our output to four articles per month. By the way, over my objection (and over Bert's indication of support for my objection), they are running four substantial feature articles in the March issue, even though we have no backlog and no additional staff. The other day Harris broke new ground in his privileging of advertising over editorial by bringing his advertising manager to an editorial meeting and letting the needs of advertising set the agenda. They forced the meeting to make a big editorial decision after very little discussion, for the sake of advertising. Warren objected strongly; Gloria called it "bullying."

Harris told me that he is open to hiring more support staff, but that we would have to discuss it first at a staff meeting, possibly the next one. I told him that some of us thought we had already discussed it at length at staff meetings and that the need was clear.

Overall, Harris said that he wasn't inclined to give me much consideration, because of my organizing activity last

S 000752

year. And he mentioned your name here too, Graham, as another unforgivable transgressor. "You tried to get me fired," he said, speaking either about me alone, or about you and me, or about all those involved. I said that isn't true. He said that if I believe that, then I must be very naive. And his attitude indicated that he doesn't think I believe that and that he doesn't want to even consider the possibility that I do. I think he wants to believe that I tried to get him fired, because according to his value system that would give him both the desire and moral right to fire me or drive me out, which now appears to be his agenda.

In pursuit of that agenda, Harris appears to have given Benka license to go after me and maybe all of management's perceived enemies on the staff. Around 6 pm on Wednesday 28 January 1998, I was in my office talking to Toni on the telephone when Benka opened the door and asked rudely and sarcastically if I was talking to one of our authors. I said, "No, I'm talking to a coworker, Toni." He acted as if he already knew that. He stepped further into my office and said that he wanted in on our conversation. I found this shocking, of course, and unprecedented. I switched Toni to the speakerphone and told her that Steve was here and wanted to be in on our conversation. She sounded equally shocked. Benka suggested that she come over to my office, and she said OK. Without saying anything, I walked out of my office and into the open area of desks just outside, and Benka followed. I did this to make room for Toni and to get some physical distance between myself and a former post office employee who was clearly behaving very strangely. Toni arrived quickly.

Benka asked me and Toni what we had been talking about on the telephone. I thought his question was way out of line, but I nevertheless told him: We had been discussing the May 1998 50th anniversary issue of Physics Today. (That is ironic, because every May-issue meeting that Benka has been a part of has been a disaster. Virtually every member of the staff thinks that that issue has been badly mismanaged, and no one thinks that yet another meeting with Benka is the way to generate the ideas that the magazine desperately needs to salvage it.) But after giving that short answer, I said that the important question is why he was trying to barge in on our conversation.

He said that he is forbidding all private conversations between staff members at work. From now on, all conversations between staff members must be open to management supervision, he said. When I asked him why, he referred to the organizing activity that took place last year and said that he doesn't want that to happen again. (He and Harris have no doubt that I played a leading role in that.) This looked like a retaliatory and repressive policy aimed more at me than at the rest of the staff, and so I

asked him whether or not it applies to everyone. He said it does. I didn't believe him (but I didn't say that I didn't believe him), and so I pressed him three or four times to say whether or not he was going to announce the new policy to the rest of the staff. His final statement was that he knows that I want to know that.

Of course, even if the new repressive policy is not formally announced, no one can afford to take a chance on violating it -- especially Toni and me, to whom it was announced formally. (Paul got a semi-formal announcement, as the discussion took place right outside his door, which was open at the time.) News of management's dim view of private conversations has spread throughout the staff by way of -- yes, you guessed it -- private conversations.

Even though Benka's Gestapo-like enforcement of the new policy was very frightening, in the middle of it all Toni managed to point out that we don't have the bi-weekly Q&A meetings anymore. If management wants to know what the staff is concerned about, they can have such meetings rather than monitor our conversations. Benka ignored her. I think Toni's idea is a good one and should be among our arguments and suggestions.

About half an hour before Benka busted up the telephone conversation between Toni and me, he did something that in retrospect was clearly part of the new repression but at the time felt merely strange and creepy. I had stopped by Toni's office to give her a newspaper article that I thought might interest her. It was about the Clinton/Lewinsky affair, which we had discussed earlier in the day. The article was a brief historical survey showing that presidents who cheated on their wives were more likely to lie to the public as well, justifying public interest in this sort of thing. Toni and I discussed the article briefly and then discussed the 50th anniversary issue. During the latter discussion, Benka opened the door to Toni's office, entered the room and asked if he could join in the conversation. This seemed very strange, of course, especially because he did not know what we were talking about. Toni was perfectly polite in spite of Benka's rude entry. She pointed out the article that I had brought by, dutifully restarting our conversation about it from the beginning for Benka. The three of us discussed the issue for a while, during which Toni and I were treated to editor Benka's view that the press should know its place and not try the president. It was an awkward discussion, because I and maybe Toni (she can speak for herself) were not really interested in speaking with Benka. When we finished the discussion, Benka showed no sign of leaving Toni's office. He indicated in a subtle but clear way that he would not leave first. This was not only bizarre, but also had something of an ugly edge to it. Although we had no idea what was going on, Toni and I acted quickly to undo the

situation -- she by immediately announcing that she had work to do, and I by quickly leaving the room. Benka and I then spoke about feature articles for ten minutes or so at his office. That conversation consisted of me detailing for him all the progress I had made on a number of articles. The discussion was pleasant, although not really necessary, and he acted pleased and calm throughout. However, when we finished talking, I walked toward Toni's office, and Benka followed me. He asked if I was going to Toni's office, and I said yes. He asked if he could come along. By that time he had already followed me most of the way to her office. I told him that she and I were in the middle of a conversation that we had started earlier in the day, and that it would take too long to fill him in on all the background. We discussed this briefly, and he finally suggested that neither one of us go to Toni's office. I didn't say anything one way or the other, and he went back to his office. I noticed a box nearby containing copies of the latest issue of the magazine; I took one and went back to my office. Later, when Toni and I spoke on the telephone about the 50th anniversary issue, we began our conversation by trying, without success, to figure out our supervisor's mysterious and disturbing behavior earlier.

S 000755

May 2002

HUMAN RIGHTS COMMITTEE
of the
PLASMA SCIENCE AND APPLICATIONS COMMITTEE
of the
INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Co-Chairman:
Dr. Wallace Manheimer
Code 6707
Naval Research Laboratory
Washington, DC 20375

Dear Prof. Krashennikov:

Co-Chairman:
Prof. Victor Granatstein
Department of Electrical
and Computer Engineering
University of Maryland
College Park, MD 20742

We would be grateful if you would bring this letter to the attention of the Human Rights Committee of the Division of Plasma Physics of the APS. The ExCom of PSAC (Plasma Science and Applications Committee) of the IEEE voted unanimously authorizing us to contact you to make you aware of a human rights violation that we feel has occurred when *Physics Today* / AIP fired one of its editors, Jeff Schmidt. The human rights abuses we see include forcible suppression of both critical comments and private conversations within the workplace, followed by vindictive termination. The principal new information we feel we are providing consists of statements by three former AIP employees who are now willing to testify as to working conditions there at the time.

Enclosed is our report to PSAC ExCom. We requested the enclosed motion. Instead, we were instructed, by the aforementioned unanimous vote to contact your committee in the belief that protest and request for redress from you would have more impact.

Yours very truly



Wallace Manheimer



Victor Granatstein

PS. There is one member of your committee, Bruce Scott we do not know and there is more than one in the APS directory. Could you see that this gets to him as well. Thanks.

WM & VG

S 000756

Report of the human rights committee, ICOPS Banff, May 2002

Last October's human rights report (A) mentioned the firing of Jeff Schmidt, an editor at Physics Today. Many people thought he was fired for the politics he expressed in a book he wrote *Disciplined Minds*, a book which claims professional are regimented to toe the 'company line' in various ways. Many hundreds of individual scientists wrote to Physics Today to protest. These are documented on a web site <http://disciplined-minds.com>. We wrote to Marc Brodsky of AIP to request more information (B), and his response (C) is enclosed. He claimed that Schmidt was fired for using AIP time for private purposes (ie free lance writing). Our initial impulse was to think in terms of some sort of compromise between Schmidt and AIP, and we gently suggested this by sending each of them our report. At the time we also thought the matter would be resolved by the courts.

A few months ago, we got a letter from Schmidt, we have had several others since then. Among other things he told us the dispute was not being resolved in the courts. Also he told us he would still be willing to reach a compromise with AIP and that he has been unable to gain other employment, largely due to the way he left AIP, ie no credible reason, no recommendation. Also he mentioned that his savings were largely depleted. We decided to investigate further.

His web site makes several rather shocking allegations, among them:

1. Schmidt was given a gag order and told not to talk critically about AIP.
2. He was told that private conversations of any kind were not permitted in the work place.
3. He was fired despite being given many good ratings, promotions and salary increases during a 19 year career.
4. The excuse given for firing him was fraudulent in that many other AIP employees were allowed to, and in fact, even encouraged to do extracurricular work of a scholarly nature as long as their AIP deadlines were met.
5. He had gotten in trouble at AIP for pushing for more diversity in the workplace.
6. After being fired he applied for unemployment benefits from the Maryland Department of Labor. AIP tried to prevent him from collecting, but when it came time to make its case against him, did not show up to do so.

If true, these statements would be a sweeping condemnation of employment practices at AIP, an organization we all feel we are part of in some way.

To further examine this, we contacted 3 former employees who were familiar with the situation, William Sweet, Paul Elliott, and Jean Kumagai. Sweet's and Kumagai's letters are included (D and E). Elliott sent a very long statement which we summarize here (F). They all confirm these allegations (except for 6 which we were unable to verify). In fact, if anything the situation was worse than described on the web site. Once we had these, we wrote once more to Marc Brodsky. Our letter is included (G). So far he has not responded, even though it took him only a day to respond to our first letter.

Our take: It is possible that Schmidt was fired for the politics expressed in the book. Many physicists believe this and have made their concerns known to AIP. It is also possible, and in fact seems more likely to us, that he was singled out for his efforts to bring more diversity to the workplace and for other instances of workplace activism. Then, despite a long and productive career there, AIP subjected him to a two year long smear campaign designed to damage his standing and reputation there. It then found a totally bogus reason to fire him without giving him the benefit of honest evaluation or an opportunity to defend or explain himself. What is not possible is that Schmidt was fired for the reason stated by AIP.

We feel that this is inexcusable and an appropriate area of concern for our committee. This is especially true where it is in a sense a matter internal to our own community. We feel it is vital that AIP and other APS and IEEE organizations treat their employees according to the highest standards, not like galley slaves. Accordingly we ask ExCom to pass the following resolution:

RESOLVED

The Plasma Science and Applications Committee of the IEEE deplores the firing of Jeff Schmidt by AIP. An investigation by our Human Rights Committee has convinced us that his termination was improper and should be reversed. We urge AIP to rehire Schmidt, openly welcome him back, cease all harassment of him, and give him back pay for the period of his forced unemployment

Wallace Manheimer
Victor Granatstein

S 000758

D

X-Sender: wsweet@shogun.ieee.org
Date: Tue, 12 Mar 2002 15:57:23 -0500
To: Wally Manheimer <manheime@ccs.nrl.navy.mil>
From: William Sweet <w.sweet@ieee.org>
Subject: Re: Disciplined minds

Dear Mr. Manheimer,

I cannot comment directly on the circumstances of Jeff Schmidt's dismissal, since I left the magazine many years before it occurred. During the eight years I worked as a colleague of Jeff's at Physics Today, I knew him to be a conscientious, competent, and consistently hard-working employee of the magazine who always got done what he was expected to get done on time and well.

Regarding the question of working on office time, it was my own experience at Physics Today that one was permitted to do freelance work or pursue personal projects, as long as they did not interfere with or detract from one's responsibilities to the magazine. I did a great deal of freelance work openly, much of it appearing in publications read regularly by Physics Today staff.

My impression is that in journalism and publishing generally, it is taken for granted that staff--and especially younger staff--will do freelance work or work on scholarly projects, partly to further their careers, partly just for the money, and partly for the joy of it. It is not uncommon, indeed, for organizations to positively encourage such work.

For that reason alone, I strongly suspect that the stated reasons for Jeff's dismissal were spurious. As stated at the outset, however, I am not in position to speculate about what the real reasons might have been.

Sincerely,

Bill Sweet

Dear Mr. Sweet:

I am the co-chair of the human rights committee of IEEE Plasma Science and Applications Committee. Recently the firing of Jeff Schmidt over his book *Disciplined Minds* has come to our attention and we are looking into it. Jeff has said we could contact you. For our report (to be delivered to our executive committee in the ICOPS meeting in Banff, May 24) we would like to get the impressions of other coworkers and former coworkers at AIP. If you could give us your impressions of what transpired that would be very helpful to us. Particularly Jeff said that you could describe your own experience in doing free lance work while you were employed at APS. I would appreciate if you would give me your take in a return email, especially on the items I mentioned. I will be away for a week and a half or so, but hopefully you can get back to me. I may also give you a call when I get back.

S 000759

Thank you for your attention to this.

E

X-Sender: jak.interport@pop.rcn.com
Date: Sun, 21 Apr 2002 18:45:42 -0400
To: manheime@ccf.nrl.navy.mil
From: Jean Kumagai <jak.interport@rcn.com>
Subject: more about Jeff Schmidt

Dear Wally,

Thanks so much for giving me the opportunity to help your human rights committee do something on behalf of Jeff Schmidt and free expression within the science community. In my previous message, I gave brief answers to your questions about Jeff's promotions and pay raises and about the gag orders at Physics Today. Below I've provided greater detail on these two issues. I hope you find this useful for your investigation. Please let me know if I can be of further assistance.

All best,
Jean

I was a member of the Physics Today editorial staff for ten years, leaving just six months before Jeff was fired. As is the case in many workplaces, he and I and other staff members routinely discussed our interactions with management, including performance reviews, pay raises, editorial disputes, and so on. That's how I know that AIP always gave Jeff job-performance ratings of "meets job requirements" or "exceeds job requirements." (One year, management lowered his rating from "exceeds job requirements" to "meets job requirements," despite the lack of evidence that the quality or quantity of Jeff's work had fallen. Jeff contended, and I agree, that they were punishing him for his workplace activism.)

As for promotions, I attended the staff meeting where the editor announced that Jeff had been promoted. Bill Sweet received a promotion at the same time, and I remember Jeff and Bill humorously congratulating each other while the rest of us applauded. Promotions at AIP are not automatic, but are based on careful scrutiny of the employee's work. The same goes for raises. As a matter of policy, AIP does not give automatic cost-of-living raises, only merit raises. AIP would not have employed Jeff, promoted him, and given him merit raises for 19 years if he had not been doing his job to AIP's satisfaction. I think it is crucial to note that AIP, like other employers, regularly scrutinizes the quality and quantity of each employee's work. Thus, during my decade at Physics Today, I saw coworkers put on probation, demoted, or fired for not meeting the magazine's standards. AIP never did any of these things to Jeff -- until they saw his critical writing.

In firing Jeff, AIP claimed that he had stolen from the company, referring to the opening lines of his book ("This book is stolen. Written in part on stolen time, that is.") This is a laughably baseless charge. In the opening paragraph of his book, Jeff explains that "written in part on stolen time" means "spending some office time on my own work." This describes common Physics Today workplace behavior, albeit with an attitude. At Physics Today there were no official break times; editorial employees were expected to meet their deadlines, and they took their breaks whenever they wanted along the way. All of Jeff's coworkers (including me) openly pursued personal interests during their work breaks, but Jeff was the

only one who was punished for failing to make sure that 100 percent of his office time was work time. The difference was the nature of Jeff's break-time activities -- his workplace activism and critical writing.

Like many employers, AIP engaged in "speed-up," demanding that editors and other employees do more work in the same amount of time. Jeff was outspoken in opposing this, in the interest of both staff and readers, but he always adapted to the changing standard himself. When Jeff was fired, he told me that he was two months ahead of schedule in meeting the annual work quota that AIP had set for him -- that he had completed 12 months' worth of work in 10 months' time. Having observed his work style for ten years, I do not doubt this.

Management had to be fully aware of these facts, and therefore fully aware that Jeff's book about the politics of work was doing nothing more than expressing a critical attitude about work. But they fired him anyway, nine days after they learned of his book and its contents, a delay that indicates that their action was calculated rather than emotional. As you may have seen, on 5 April 2002 the Chronicle of Higher Education reported the numerous protests by physicists against Jeff's firing. The reporter apparently asked AIP CEO Marc Brodsky, What if the book's opening line was merely a rhetorical device? Brodsky responded, "Even if it was, it's not good for the morale of other employees." In other words, Brodsky admits that he was willing to fire Jeff simply for expressing what Brodsky considers to be a bad attitude. I think the evidence indicates that that is exactly what Brodsky did.

As for the gag orders, the one placed on Jeff was imposed a few days after the second staff retreat. The retreat had been billed as an opportunity for the editorial staff to get together and "brainstorm" about the magazine's content and direction. Much to our surprise and disappointment, however, the managers prepared a rather rigid agenda for the retreat, one not at all conducive to creative thinking and open discussion. Near the beginning of the retreat, after opening remarks by Physics Today publisher Charles Harris, Jeff asked if we could ask questions. Harris said no. Jeff then argued that staff members SHOULD be allowed to ask questions at a retreat. Harris angrily shouted "No, that's an order!", ending the discussion. When Harris later called on me to speak about my department, I criticized him for shutting Jeff up. Some others did the same thing. The staff was quite upset by the repressive atmosphere that management had established. Needless to say, nothing much was accomplished at the retreat.

The gag order instructed Jeff not to tell his coworkers that he was being restricted, but he showed the order to me and other coworkers anyway. That upset Harris, but also led to staff pressure that forced Harris to rescind the order after about two months (along with a similar order that had been imposed on another staff editor, Graham Collins).

The gag orders were soon followed by the ban on private conversations in the workplace, wherein Physics Today Editor Stephen Benka announced that all conversations between staff members had to be open to monitoring by managers. Unlike the gag order, the ban was not issued in writing but rather declared verbally to Jeff and another staff editor, Toni Feder. (Toni and I worked very closely to produce a department of the magazine.) I heard about the ban immediately from both Jeff and Toni. Although Benka announced the ban to Jeff and Toni, he said that it applied to the entire staff. Paul Elliott, another editor, overheard the announcement. The rest of the staff learned of it, ironically, through private conversations. Unlike the gag orders, the ban on private conversations in the workplace

S 000761

was never rescinded, even though Jeff formally appealed it to James Stith, a top official of the American Institute of Physics. I think the ban was aimed mainly at silencing Jeff and discouraging other staff members from talking to him.

Since leaving Physics Today in November 1999, and especially since Jeff's firing, I've often thought about the gag orders and the conversation ban and the generally repressive environment there. Unlike a lot of bad memories, though, these ones don't fade with time. I hope that the human rights committee will do whatever it can to obtain justice for Jeff. In so doing, I believe you will also be helping to improve the work environment at Physics Today, by compelling AIP to reconsider its policies and actions, and ultimately benefitting the science community at large.

S 000762

F

Summary of Paul Elliott's email:

Paul Elliott worked in a neighboring office to Schmidt for just under 5 years, from 1995-2000. Schmidt was an editor for 14 years before Elliott arrived, which was just after AIP hired a publisher (for the first time), Charles Harris, and an editor in chief, Steven Benka. From 1995-2000, according to Elliott, Schmidt was well regarded by the PT staff, met all deadlines and other obligations. But Harris, and Benka particularly increasingly became openly hostile toward Schmidt from about 1995 through 1997. During that period, Schmidt was in the forefront of staff efforts trying to get PT to hire a more staff with more diversity (virtually the entire professional PT staff apparently was white male), as well as bring about other improvements in the staff's working conditions. This effort apparently led to the embarrassment of PT management in front of higher ups at AIP and the PT advisory committee (I suppose a bunch of senior physicists).

At about this time, in the fall of 1997, Charles Harris not only gave Schmidt a written and secret gag order, which Elliott saw, but gave one to another editor, Graham Collins, whom Harris also saw as troublesome. A month or so later, under pressure from PT staff, these orders were rescinded. However in January 1998, Elliott heard Benka angrily tell Schmidt that private conversations between members of the PT staff behind closed doors were forbidden and had to take place outside after business hours. After this, Schmidt kept a very low profile at PT. If he had been a "troublemaker" before this, he certainly ceased being one at this point-but, said Elliott, there was no let-up in management's hostility toward him.

Elliott said that many members of the PT staff, certainly including Benka, used the work day for other private purposes. Elliott worked 10 feet from Schmidt for 5 years and saw no evidence that Schmidt was doing anything but his job as an editor. He certainly was not visibly working on a book. Elliott even pointed out that in late 1998 Schmidt took a 6 month unpaid leave of absence, and in retrospect, Elliott surmises that it was probably to work on his book. During that period too, said Elliott, management continued to openly malign and denigrate Schmidt.

Elliott's conclusion was that PT editorial management thought of Schmidt as a trouble maker, subjected him to "a long term smear campaign followed by prejudicial termination on a fundamentally bogus charge", and fired him as an act of revenge without giving him a chance to explain or defend himself.

S 000763

G

HUMAN RIGHTS COMMITTEE
of the
PLASMA SCIENCE AND APPLICATIONS COMMITTEE
of the
INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS

Co-Chairman:
Dr. Wallace Manheimer
Code 6707
Naval Research Laboratory
Washington, DC 20375

Co-Chairman:
Prof. Victor Granatstein
Department of Electrical
and Computer Engineering
University of Maryland
College Park, MD 20742

April 17, 2002

Dr. Marc H. Brodsky
Executive Director and CEO
American Institute of Physics
One Physics Ellipse
College Park, MD 20740

Dear Dr. Brodsky:

We sent you the enclosed letter concerning the firing of Jeff Schmidt and also enclosed is your response for which we thank you. We have continued to look into this matter, and we must say that with our current understanding of the situation, we find the response of AIP to be not satisfying to us. We have spoken to several people, and apparently employees at AIP are not fired for using company time for such private business as free lance writing, as long as all AIP deadlines were met. Schmidt and others have claimed that the expression 'stolen time' was not used to confess to larceny, but to emphasize the particular point made in the book. From what we know now, this seems reasonable to us.

As far as we are able to discern, Schmidt met all his deadlines at AIP and was a well regarded worker. Several people have claimed that internal records in Physics Today verify this.

S 000764

There is one factual matter which we were unable to independently verify and we wonder if you could help us out. On his web site, Jeff Schmidt claimed that when applying for unemployment benefits, AIP tried to prevent him from receiving them, but when it came time for AIP to make its case to the Maryland Department of Labor, it did not show up to do so. We tried to verify this with the aforementioned department, but these records are confidential.

Let us tell you what we think may have happened. We are not certain, but this is the simplest and most reasonable explanation of the facts which we know. Around the end of 1997, in a meeting with AIP and Physics Today's external advisory committee, Jeff Schmidt embarrassed his supervisors at Physics Today by complaining to powerful outsiders about lack of diversity in the workplace. We can certainly believe that his supervisors would frown on his taking such a complaint so far outside the chain of command. In some organizations this might be grounds for dismissal, while in others it would be acceptable behavior. If Schmidt had been fired then, for that, we would be much less sympathetic to him. While unquestionably harsh, he would have suffered a serious consequence for what might have been regarded as a serious faux pas. The firing would have been honest on the part of his employer, he would most likely have learned from the experience, and the negative impact on his reputation would have been minimized. Instead however, AIP strung him along for more than two years, a time during which Schmidt was especially trying to keep out of trouble. Finally AIP found a bogus reason for firing him, and did so in a way that would do him maximum harm. This seems inexcusable to us, and an appropriate area of concern for our committee; particularly where it involves an organization which we all support and would hope lives up to the highest standards regarding its personnel.

Anyway, this is the way we currently see it and it is the way we will present it to our Executive Committee in mid May. Do we have it wrong? We invite your response. (Mail to government facilities being what it is, if you decide to respond, please fax WMM 202-767-1607; US mail to VLG okay)

S 000765

There is one other thing. When we first looked into this matter, we thought the best solution would be some sort of compromise between you and Schmidt. That is why we sent both of you our initial report last October. Even at this late date, could that still be possible? Schmidt told us he would be willing to do so. Would AIP?

Yours very truly.

Wallace Manheimer

Wallace M. Manheimer

Victor L. Granatstein

Victor L. Granatstein

S 000766

Probe prompts concerted defense of the staff's
right to discuss workplace issues privately

From: Stephen Benka
To: Jeff Schmidt
Date: 8/19/99 7:09pm
Subject: First thoughts on your response to the review

Jeff,

Because you didn't have time to discuss your response to your review when you gave it to me, here are my initial thoughts on the inaccuracies that you perceive. Let's discuss this further as soon as possible.

Your example #1: You neglected to mention that, initially, you had wanted to count Goldstein as one long article, not two. However, because you had completed Goldstein within the previous review cycle, and because you were two full articles short of your already reduced (because of your cancelled paternity leave) production goal for last year, we counted them as two and included them in that cycle. This ensured that you would receive an "acceptable" rating, which was clearly in your best interest.

Each editor who worked on decadal excerpts for the anniversary issue did the equivalent of one full article's work in his or her decade. There would be no reason to count yours otherwise, except that your work on your decade had to be largely redone by someone else.

As of today, to my knowledge, the Will article is not yet completed. If it were, I would count it as an article completed within this review period.

Your example #2: You are right that I should have discussed the change of weights with you. I apologize for not having done so. Let's discuss and agree on your job description as soon as possible.

Your example #3: My description is accurate.

Your example #4: Your appeal to Charles Harris, Theresa Braun, and James Stith was the proper procedure to follow. However, as we discussed earlier today (and at other times), your surreptitious circulation of your response to the staff was entirely inappropriate.

I still would like you to tell me which member or members of the staff you have discussed this year's review with.

-Steve

Here my supervisor, in response to my discussions with coworkers about workplace issues mentioned on my review, repeats his demand to know which employees were involved in those discussions.

S 000767

Messages to my coworkers Paul Elliott, Toni Feder, Jean Kumagai and Warren Kernberg

Juno e-mail printed Fri, 20 Aug 1999 14:14:46, page 1

From: Jeff Schmidt <jeff-schmidt@juno.com>
Received: (from jeff-schmidt@juno.com)
by m4.jersey.juno.com (queuel) id EJGYUQBF; Fri, 20 Aug 1999 14:04:47 EDT
Return-path: jeff-schmidt@juno.com
To: lugenbold@juno.com, tfeder@wam.umd.edu, jak@interport.net
Cc: jeff-schmidt@juno.com
Date: Fri, 20 Aug 1999 14:04:47 EDT
Subject: Naming names
Message-ID: <19990820.140725.15951.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Juno 1.49

Hi Paul, Toni and Jean,

I just sent the message below to Warren. I don't know if he will get it before Tuesday, when he is next in the office. As you will see, it applies to you, too, but I thought it would be best to keep the message to Warren separate. (Please be careful not to mention his name in the context of this stuff.) Any suggestions or offers?

Jeff

Hi Warren,

My discussion with Steve Benka about my performance review took place yesterday afternoon (Thursday 19 August 1999). It went more or less as expected (he basically didn't budge), except for one thing: He indicated that what he said about me in the review was confidential. At first I took that to mean that the review was confidential like a doctor's report, which goes only to the patient, to protect the patient's privacy. But it quickly became clear that what he meant was that he didn't want me to tell anyone what he said about me in the review -- for his protection, not mine.

I responded by saying that most of the staff doesn't understand "confidential" to mean that they are forbidden to talk about their reviews (it is often necessary to talk about a review to check its accuracy), and I pointed out that they commonly discuss such things with their coworkers. Besides, I said, in this case it's too late, because I have already discussed it with a coworker (more than one, actually), and I didn't ask that person not to discuss it with others. So lots of people could know about it by now (I'm sure they do).

Benka appeared to be genuinely surprised and disturbed that people talk to each other about these things. I told him that I was surprised that he was surprised. I said that lots of people here talk to each other about everything, and that's a good thing -- it's a sign of closeness. He was also disturbed that I had discussed the review with a coworker, and he asked me to tell him who it was. (I won't do that, of course.) I said that I didn't want to get anyone in trouble. He indicated that he still wanted to know. So I offered to ask the person if it would be ok to mention his or her name. At the end of the meeting, Benka said again that he wanted to know who it is. And a few hours later, at the end of a not-very-interesting e-mail message to me about other aspects of the review, he wrote this:

S 000768

>I still would like you to tell me which
>member or members of the staff you have
>discussed this year's review with.

>--Steve

So I am now contacting all the people whom I think know about my review, to get their ideas on what I should tell Benka.

Jeff

Internet just the way you want it. Free software, free e-mail, and free Internet access for a month! Try Juno Web: <http://dl.www.juno.com/dynoget/tagj>. Get the

S 000769

From: Toni Feder <tfeder@wam.umd.edu>
Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by m4.jersey.juno.com with SMTP id AAA555HGZAWJHMDS
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Fri, 20 Aug 1999 14:22:15 -0400 (EST)
Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53])
by mx2.jersey.juno.com with SMTP id AAA555HGZATTN59J
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Fri, 20 Aug 1999 14:22:15 -0400 (EST)
Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])
by mx5.boston.juno.com with SMTP id AAA555HGZAKSV2Y2
(sender <tfeder@wam.umd.edu>);
Fri, 20 Aug 1999 14:22:15 -0400 (EST)
Received: from wam.umd.edu (async249-51.async.duke.edu [152.3.249.51])
by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id OAA02801;
Fri, 20 Aug 1999 14:22:11 -0400 (EDT)
Return-path: <tfeder@wam.umd.edu>
Reply-To: tfeder@wam.umd.edu
To: Jeff Schmidt <jeff-schmidt@juno.com>
Cc: lugenbold@juno.com, jak@interport.net
Date: Fri, 20 Aug 1999 14:25:15 -0400
Subject: Re: Naming names
Message-ID: <37BD9D7F.A57F16F9@wam.umd.edu>
References: <19990820.140725.15951.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

Hi Jeff, Jean, Paul,

obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association -- why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people. Also, don't forget, Chas is among those people.

I don't know what you should tell him-- just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request? something like that.

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

S 000770

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

Toni

From: "Jean A. Kumagai" <jak@interport.net>
Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by m4.jersey.juno.com with SMTP id AAA555KHS AZ77UWS
for <jeff-schmidt@juno.com> (sender <jak@interport.net>);
Fri, 20 Aug 1999 14:56:48 -0400 (EST)
Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53])
by mx2.jersey.juno.com with SMTP id AAA555KHS AXKWHG2
for <jeff-schmidt@juno.com> (sender <jak@interport.net>);
Fri, 20 Aug 1999 14:56:48 -0400 (EST)
Received: from amsterdam.interport.net (amsterdam.interport.net [199.184.165.19])
by mx5.boston.juno.com with SMTP id AAA555KHS APY897A
(sender <jak@interport.net>);
Fri, 20 Aug 1999 14:56:48 -0400 (EST)
Received: from [209.122.227.240] (209-122-225-172.s172.tnt1.nyw.ny.dialup.rcn.com
[209.122.225.172])
by amsterdam.interport.net (8.8.5/8.8.5) with ESMTP id OAA01347;
Fri, 20 Aug 1999 14:56:57 -0400 (EDT)
Return-path: <jak@interport.net>
In-Reply-To: <37BD9D7F.A57F16F9@wam.umd.edu>
To: tfeder@wam.umd.edu, Jeff Schmidt <jeff-schmidt@juno.com>
Cc: lugenbold@juno.com, jak@interport.net
Date: Fri, 20 Aug 1999 14:58:36 -0500
Subject: Re: Naming names
Message-ID: <v03110711b3e35d5dc946@[209.122.227.240]>
References: <19990820.140725.15951.0.jeff-schmidt@juno.com>
X-Status: Read

Hi Jeff (and Toni and Paul),

I don't know what would be the best way to respond to Benka. I personally don't mind if you tell him you talked to me. On the other hand, if you think it would be stronger to say that nobody wanted their name revealed for fear of retribution, then I definitely do not want you to mention my name.

You can also tell Benka that I agree with everything in both of your responses to your performance reviews, that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your distributing your appeal to the staff) will only get worse if he doesn't improve his attitude. You might also add that management's increasingly repressive policies may soon lead to the voluntary departure of one of its best editors. :)

S 000771

Should I tell anybody else on the staff about your review? It will have to

wait until after I get back from Maine.

Jean

At 2:25 PM -0400 8/20/99, Toni Feder wrote:

>Hi Jeff, Jean, Paul,

>

>obviously I don't think you should tell Steve whom you discussed your review
>with. Since he is so harsh with you, it would only impugn those people by
>association -- why does he want that info? It seems he would use (or at least
>hold) it against us. So I absolutely don't want him to know I am among those
>people. Also, don't forget, Chas is among those people.

>

>I don't know what you should tell him-- just that the person/people involved
>felt that it would be used against them? Or more simply, they felt
>uncomfortable with that request? something like that.

>

>

>Maybe you could say something like, "The conversations I had with (some of) my
>coworkers were private, and they feel it would be an invasion of their privacy
>for me to reveal their names just because they talked with me. I'm sorry I
>can't reveal anyone's name."

>

>You could add something reassuring, if you can think of anything. Something to
>let him know you are not planning or inciting a rebellion among the staff....

>

>Toni

S 000772

From: Warren Kornberg
To: Jeff Schmidt
Date: 8/20/99 8:11pm
Subject: Re: Naming names

Jeff:

1--e-mail is not confidential, and if you want to be sure, it should not be used for things (like naming names) you do not want discussed.

2--I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business. If you want to tell him you talked to me, that, too, is your business; I don't really care. But as you spell it out, the demand seems high-handed.

3--As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

w

>>> Jeff Schmidt 08/20/99 01:42PM >>>

Hi Warren,

My discussion with Steve Benka about my performance review took place yesterday afternoon (Thursday 19 August 1999). It went more or less as expected (he basically didn't budge), except for one thing: He indicated that what he said about me in the review was confidential. At first I took that to mean that the review was confidential like a doctor's report, which goes only to the patient, to protect the patient's privacy. But it quickly became clear that what he meant was that he didn't want me to tell anyone what he said about me in the review -- for his protection, not mine.

I responded by saying that most of the staff doesn't understand confidential to mean that they are forbidden to talk about their reviews (it is often necessary to talk about a review to check its accuracy), and I pointed out that they commonly discuss such things with their coworkers. Besides, I said, in this case it's too late, because I have already discussed it with a coworker (more than one, actually), and I didn't ask that person not to discuss it with others. So lots of people could know about it by now (I'm sure they do).

Benka appeared to be genuinely surprised and disturbed that people talk to each other about these things. I told him that I was surprised that he was surprised. I said that lots of people here talk to each other about everything, and that's a good thing -- it's a sign of closeness. He was also disturbed that I had discussed the review with a coworker, and he asked me to tell him who it was. (I won't do that, of course.) I said that I didn't want to get anyone in trouble. He indicated that he still wanted to know. So I offered to ask the person if it would be ok to mention his or her name. At the end of the meeting, Benka said again that he wanted to know who it is. And a few hours later, at the end of a not-very-interesting e-mail message to me about other aspects of the review, he wrote this:

>I still would like you to tell me which
>member or members of the staff you have
>discussed this year's review with.

S 000773

>--Steve

So I am now contacting all the people whom I think know about my review, to get their ideas on what I should tell Benka.

Jeff

PS -- Careful with those computer buttons! I just noticed that your brief e-mail message to me yesterday morning also went out to Jeff Bebee, Georgina Guagenti and advtsg. No harm done.

S 000774

Juno e-mail printed Mon, 23 Aug 1999 01:34:13 , page 1

From: Paul J Elliott <lugenbold@juno.com>
Received: from mx1.jersey.juno.com (mx1.jersey.juno.com [209.67.33.54])
by m4.jersey.juno.com with SMTP id AAA56BC8WANXWDKA
for <jeff-schmidt@juno.com> (sender <lugenbold@juno.com>);
Sun, 22 Aug 1999 19:46:28 -0400 (EST)
Received: from m6.boston.juno.com (m6.boston.juno.com [205.231.101.197])
by mx1.jersey.juno.com with SMTP id AAA56BC8WAJ6CKW2
for <jeff-schmidt@juno.com> (sender <lugenbold@juno.com>);
Sun, 22 Aug 1999 19:46:28 -0400 (EST)
Received: (from lugenbold@juno.com)
by m6.boston.juno.com (queuemail) id EJNQ7AHQ; Sun, 22 Aug 1999 19:46:11 EDT
Return-path: <lugenbold@juno.com>
To: jeff-schmidt@juno.com
Cc: tfeder@wam.umd.edu, jak@interport.net
Date: Sun, 22 Aug 1999 19:46:11 EDT
Subject: Re: Naming names
Message-ID: <19990822.202344.4631.0.Lugenbold@juno.com>
References: <19990821.120842.14367.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Juno 1.49

Jeef (Jean, Toni too):

I think Warren is correct, but I further recommend that you tell Benka nothing other than that, having discussed the matter further with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had with ALP employees, non-ALP journalists, or outside lawyers.

And tell him so in writing, on the chance that you can develop a Benka-incriminating paper/electron trail.

To that end, I also recommend that you consider preceding that memo with one of inquiry, asking him to tell you why he wants you to name names, and what he intends to do once he knows those names.

However, If you have no stomach for ensnaring him, then I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

S 000775

Paul

On Sat, 21 Aug 1999 12:06:03 EDT Jeff Schmidt <jeff-schmidt@juno.com> writes:
>Hi Toni, Paul and Jean,
>
>Here's some stuff from and to Warren, relevant to all. Paul, do you
>want to comment on Benka's request that I name names?
>
>Jeff
>
>-----

>
>Jeff:
>--I don't think there is any reason you should be required to disclose
>conversations you might or might not have had with other people in the
>building. With whom you discuss your business is your business. If
>you want to tell him you talked to me, that, too, is your business; I
>don't really care. But as you spell it out, the demand seems high-handed.
>
>--As far as the review's confidentiality is concerned, I believe that it is, but
>as a restriction on the management, not on you.
>w
>
>-----
>
>Hi Warren,
>
> Thank you for basing your response to Benka's demand on principle, rather
>than on fear.
>
> I am still thinking about what to tell him, but I am leaning very strongly
>toward not giving him any names, even though you and some others have given me
>permission to do so. I don't want to give the appearance of finding a
>totalitarian request acceptable.
>
> One thing I am thinking about doing is simply quoting people's responses
>(yours and about three others), leaving out their names and anything else that
>might identify them, and also leaving out the sentences where they give me
>permission to mention their names.
>
> If Benka wants to know more, he can ask individual staff members whether or
>not I discussed my review with them. One useful response might be to simply tell
>him the truth -- that I said that I was trying to determine whether or not the
>review was accurate, and so we went over the review and compared it to the facts
>as we remembered them. And, of course, let him know the outcome. Another
>response might be to refuse to report on private conversations but to say that
>someone did show you the review and that you are willing to discuss its
>accuracy. Whatever; I'm not worried; Benka doesn't present much of an
>intellectual challenge in these or other matters.
>
>Jeff
>
>
>
>
>
>
>
>-----
>Get the Internet just the way you want it. Free software, free e-mail,
>and free Internet access for a month! Try Juno Web:
><http://dl.www.juno.com/dynoget/tagj>.

S 000776

Get the

Internet just the way you want it. Free software, free e-mail, and free Internet
access for a month! Try Juno Web: <http://dl.www.juno.com/dynoget/tagj>.

From: Jeff Schmidt <jeff-schmidt@juno.com>
Received: (from jeff-schmidt@juno.com)
by m4.jersey.juno.com (queuemail) id EJPQWQT4; Mon, 23 Aug 1999 05:00:46 EDT
Return-path: jeff-schmidt@juno.com
To: jak@interport.net, lugenbold@juno.com, tfeder@wam.umd.edu
Cc: jeff-schmidt@juno.com
Date: Mon, 23 Aug 1999 05:00:46 EDT
Subject: Naming names
Message-ID: <19990823.050304.14375.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Juno 1.49

Dear four colleagues who saw my annual review and who Benka wants me to name,

Taking everyone's suggestions into account, my current thinking is to not give Benka any names and to not give him anything in writing. I would give him a verbal report that would include the four responses (below) to his demand. Even though I have removed your name, I won't include your response in my oral report without your approval. So please find it below and let me know if it is ok; modify it if necessary.

As one of you suggested (and as I had decided, too), I would first ask Benka why he wants the names. To him, I think, the problem isn't the out-to-get-you review; it's the fact that I disclosed it and criticized it. If he comes around asking, "Did Jeff talk to you about his performance review?", feel free to say "yes" or "I don't feel comfortable reporting on private conversations" or "I don't feel comfortable reporting on private conversations, but I am familiar with the review and can talk about that." I'd probably be better off if you didn't say who showed you the review, and if you didn't say that you saw any written response to it.

My spoken report to Benka would be something like this:

Following up on your request, I was able to track down four colleagues who saw my annual review either because I showed it to them or because someone else did. They all reacted negatively to your request for their names, so I'm afraid I don't have any names to report. The most I can do is tell you what they told me when I asked for permission to identify them. Would that be of any use to you? [At this point Benka says yes and I read the following responses.]

1. Obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association -- why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people.

S 000777

I don't know what you should tell him -- just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request?

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy

for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

2. I don't know what would be the best way to respond to Benka. There is fear of retribution.

You can tell him that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your appeal becoming known last year) will only get worse if he doesn't improve his attitude. Management's increasingly repressive policies will inevitably have negative consequences.

3. I recommend that you tell Benka nothing other than that, having discussed the matter with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had.

I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

4. I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business....the demand seems high-handed.

As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

Jeff

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Get the

S 000778

From: Toni Feder <tfeder@wam.umd.edu>
Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by m4.jersey.juno.com with SMTP id AAA56D8F5AHQ398J
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 21:43:23 -0400 (EST)
Received: from mx2.boston.juno.com (mx2.boston.juno.com [205.231.100.52])
by mx2.jersey.juno.com with SMTP id AAA56D8F5AEVZ78J
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 21:43:23 -0400 (EST)
Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])
by mx2.boston.juno.com with SMTP id AAA56D8F4A5JXAU2
(sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 21:43:22 -0400 (EST)
Received: from wam.umd.edu (async249-13.async.duke.edu [152.3.249.13])
by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id VAA01658;
Mon, 23 Aug 1999 21:43:16 -0400 (EDT)
Return-path: <tfeder@wam.umd.edu>
Reply-To: tfeder@wam.umd.edu
To: Jeff Schmidt <jeff-schmidt@juno.com>
Cc: jak@interport.net, lugenbold@juno.com
Date: Mon, 23 Aug 1999 21:47:11 -0400
Subject: Re: Naming names
Message-ID: <37C1F95A.E7D97018@wam.umd.edu>
References: <19990823.050304.14375.0.jeff-schmidt@juno.com>
X-Status: Replied
X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

***** Please do not quote from the new content of this note. Some are
embedded in your text. *****

Hi Jeff,

I would feel more comfortable -- and think it would be a better strategy -- if
you would summarize what your colleagues' reactions were to the request that
you identify them, rather than read (as you say you would do after he says
"yes" he'd like to know their reasons), or even repeat to him
modified-verbatim what we each said. Reading identity-edited-out comments is
theatrical. I think his request should be played down, not up, and nipped in
the bud. I would prefer that (if anything at all) you say each idea once, in
your own words, rather than in ours. For example, there is considerable
overlap, in particular in the comments by me, Warren and Paul, so I suggest
summing these up. Giving him three versions is an invitation for him to
continue playing this stupid game of trying to identify your colleagues. In
my view, the point to make is simple: it's none of his business. Jean made
some different comments, and those may be worth including in whatever you say.
(It would be fine with me if you noted that more than one colleague commented
that they think of you as a very valuable colleague, and value your
contributions to the magazine.) But I prefer the simpler, less theatrical tack
of paraphrasing and summing up, rather than "handing him our words."

S 000779

In that vein, my preference would be that you still ask him (if you want to)
why he wants to identify the colleagues who know about your review, and then
say (something like) they (and I) all feel that it's not appropriate to have
to report on private conversations. One person noted that confidentiality is
a restriction on management, not on employees.

end of investigation, let's hope.

-- Toni

Subject: Naming names Date: Mon, 23 Aug 1999 05:00:46 EDT From: Jeff Schmidt
<jeff-schmidt@juno.com> To: jak@interport.net, lugenbold@juno.com,
tfeder@wam.umd.edu CC: jeff-schmidt@juno.com

Dear four colleagues who saw my annual review and who Benka wants me to name,

Taking everyone's suggestions into account, my current thinking is to not give Benka any names and to not give him anything in writing. I would give him a verbal report that would include the four responses (below) to his demand. Even though I have removed your name, I won't include your response in my oral report without your approval. So please find it below and let me know if it is ok; modify it if necessary.

As one of you suggested (and as I had decided, too), I would first ask Benka why he wants the names. To him, I think, the problem isn't the out-to-get-you review; it's the fact that I disclosed it and criticized it. [JEFF: SO WHAT DO YOU THINK HIS MOTIVE IS, IF NOT TO SOMEHOW HOLD IT AGAINST YOUR COLLEAGUE-CONFIDANTS?] If he comes around asking, "Did Jeff talk to you about his performance review?", feel free to say "yes" or "I don't feel comfortable reporting on private conversations" or "I don't feel comfortable reporting on private conversations, but I am familiar with the review and can talk about that." I'd probably be better off if you didn't say who showed you the review, and if you didn't say that you saw any written response to it. [IF HE ASKS ME, I PLAN TO SAY I THINK IT'S NONE OF HIS BUSINESS. BUT I DON'T SEE ANYWAY OF HOLDING THAT PARTICULAR DISCUSSION, AND I HOPE HE DOESN'T ASK]

My spoken report to Benka would be something like this:

Following up on your request, I was able to track down four colleagues who saw my annual review either because I showed it to them or because someone else did. They all reacted negatively to your request for their names, so I'm afraid I don't have any names to report. The most I can do is tell you what they told me when I asked for permission to identify them. Would that be of any use to you? [At this point Benka says yes and I read the following responses.]

[AS I WROTE ABOVE, I PREFER YOU PARAPHRASE, RATHER THAN READ MY RESPONSE]

1. Obviously I don't think you should tell Steve whom you discussed your review with. Since he is so harsh with you, it would only impugn those people by association -- why does he want that info? It seems he would use (or at least hold) it against us. So I absolutely don't want him to know I am among those people.

S 000780

I don't know what you should tell him -- just that the person/people involved felt that it would be used against them? Or more simply, they felt uncomfortable with that request?

Maybe you could say something like, "The conversations I had with (some of) my coworkers were private, and they feel it would be an invasion of their privacy

for me to reveal their names just because they talked with me. I'm sorry I can't reveal anyone's name."

You could add something reassuring, if you can think of anything. Something to let him know you are not planning or inciting a rebellion among the staff....

2. I don't know what would be the best way to respond to Benka. There is fear of retribution.

You can tell him that I'm appalled by his deviousness, that I consider you to be an extremely supportive and valuable colleague, and that the long-standing morale problem at PT (which obviously did not originate with your appeal becoming known last year) will only get worse if he doesn't improve his attitude. Management's increasingly repressive policies will inevitably have negative consequences.

3. I recommend that you tell Benka nothing other than that, having discussed the matter with people you trust and respect, you have decided to tell him nothing more about any performance-review-related discussions you have had.

I suggest you simply request that he cease harassing you with threats, demands, gag orders, trumped-up allegations, and ad hoc declarations of confidentiality. You could also be kind and offer to send him some easy-to-understand information on such topics as freedom of speech and the right of assembly.

4. I don't think there is any reason you should be required to disclose conversations you might or might not have had with other people in the building. With whom you discuss your business is your business....the demand seems high-handed.

[I DO THINK IT'S A GOOD IDEA TO MENTION THE FOLLOWING COMMENT BY WARREN]
As far as the review's confidentiality is concerned, I believe that it is, but as a restriction on the management, not on you.

Jeff

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<http://dl.www.juno.com/dynoget/tagj>.

S 000781

From: Toni Feder <tfeder@wam.umd.edu>
Received: from mx2.jersey.juno.com (mx2.jersey.juno.com [209.67.34.54])
by m4.jersey.juno.com with SMTP id AAA56EBYDAWVD5QS
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 22:43:15 -0400 (EST)
Received: from mx5.boston.juno.com (mx5.boston.juno.com [205.231.100.53])
by mx2.jersey.juno.com with SMTP id AAA56EBYDAUBEXCJ
for <jeff-schmidt@juno.com> (sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 22:43:15 -0400 (EST)
Received: from wilson.acpub.duke.edu (wilson.acpub.duke.edu [152.3.233.69])
by mx5.boston.juno.com with SMTP id AAA56EBYDAMGG9P2
(sender <tfeder@wam.umd.edu>);
Mon, 23 Aug 1999 22:43:15 -0400 (EST)
Received: from wam.umd.edu (async249-8.async.duke.edu [152.3.249.8])
by wilson.acpub.duke.edu (8.8.5/Duke-4.6.0) with ESMTP id WAA02639;
Mon, 23 Aug 1999 22:43:11 -0400 (EDT)
Return-path: <tfeder@wam.umd.edu>
Reply-To: tfeder@wam.umd.edu
To: Jeff Schmidt <jeff-schmidt@juno.com>
Cc: lugenbold@juno.com, jak@interport.net
Date: Mon, 23 Aug 1999 22:47:12 -0400
Subject: Re: Naming names
Message-ID: <37C20767.2DBF0F6A@wam.umd.edu>
References: <19990823.050304.14375.0.jeff-schmidt@juno.com>
X-Status: Read
X-Mailer: Mozilla 4.04 (Macintosh; I; PPC)

hi again, jeff,

this is an addendum to my previous e-mail. i'm glad you will summarize rather than read our comments. the reason for writing now is just to offer support-- because from your note i realize that you worry he would try to collect data about you from us (i.e. use our names against your, unsuccessfully, i'd bet), whereas i'm thinking he'd use the information to penalize us. irony. well, let's not let him use any of it against any of us.

toni

S 000782

Message to my supervisor in which I express the fear that he will
"kill the messenger" (me) for standing up on behalf of staff members for the
staff's right to have private conversations about workplace issues

30 August 1999

Steve --

Here are the notes that you requested. They outline the responses that I got when I asked colleagues who saw my annual review for permission to fulfill your request that I report their names to you. As you know, I did not want to give you this written report, but you insisted that I do so. I can only hope that you will use it to address staff concerns and not "kill the messenger."

Four themes were apparent in the responses from my coworkers.

1. They consider me to be a supportive and valuable colleague, and they want you to behave in accord with that view. They note that the long-standing staff morale problems did not originate with my review appeal.
2. Their anxiety was exacerbated by the fact that you were not open about your reasons for wanting their names. (Later, when I asked you specifically why you wanted their names, you refused to answer.) Thus the only thing they imagined coming from your investigation was punishment, of me or of them. They think they would be subject to guilt by association, because you have been so harsh with me.
3. They feel that their conversations were private and that to reveal them would be an invasion of their privacy. They made reference to the First Amendment, the spirit of which they evidently carry with them.
4. They agree with you that annual reviews are confidential, but they see that as a restriction on management, not on them. Thus they feel free to discuss their reviews, and many do. They think it would set a bad precedent if any of us were punished for that.

Please let me know if I can be of further assistance.

Jeff

S 000783

Message from coworker William Sweet to Prince George's County
Human Relations Commission investigator Arnold Hawkins (next page)

Subj: Fwd: American Institute of Physics case
Date: 7/15/2002 3:11:17 PM Eastern Daylight Time
From: w.sweet@ieee.org (William Sweet)
To: jschmidt222@aol.com

Dear Jeff,

I'd say the Commission both misrepresented and underrepresented. I said nothing about my job not being 9-5; all I said was that once one completed one's well-defined responsibilities, one was free to do work of one's own on office time. And I certainly took the commitments made to me by Davis and Braun as general policy, not concessions made to me personally.

Hope that helps,

Bill

S 000784

Date: Thu, 9 May 2002 12:20:22 -0400
To: avhawkins@co.pg.md.us
From: William Sweet <w.sweet@ieee.org>
Subject: American Institute of Physics case

Dear Mr. Hawkins,

Thank you for calling Tuesday and giving me the opportunity to help with your investigation, which I consider to be very important. I am writing to follow up with some more detail, which I hope you will find useful.

I have been a journalist (writer and editor) for 25 years. My first jobs were with a financial newsletter in Manhattan and then with Congressional Quarterly in Washington, D.C. At Physics Today, I was an associate editor, like Schmidt, from 1984 to 1993. I am currently Senior News Editor at IEEE Spectrum magazine, in New York.

Upon being hired at Physics Today, I asked the Editor in Chief, Harold Davis, whether I could pursue freelance writing projects during my employment. He said that would be fine as long as I did not imply that what I wrote was endorsed by Physics Today or the American Institute of Physics. I also confirmed with Human Resources that I would have unlimited long-distance telephone privileges. At the time, Theresa Braun was the director of Human Resources.

Physics Today had an exact way of defining peoples' jobs. If you did your job, then you were left alone. Writers were expected to write four pages per month, or one page per week. In theory, if I wrote four pages in one week, I could then do whatever I wanted for the remainder of the month.

While at Physics Today, I worked on a number of different freelance projects while at work, including regular articles for The Bulletin of the Atomic Scientists, which many of my colleagues saw. I worked on these projects openly, often discussing them with coworkers and using my office computer and the magazine's library for research.

One of my freelance projects was a controversial article that was published in MIT's Technology Review, in which I suggested that the Chernobyl nuclear power plant accident involved a nuclear explosion. When it was published, a number of articles were written in response, and I received a fair amount of publicity. Soon after, AIP's clipping service collected many newspaper articles commenting on my Chernobyl piece. I know this because a senior editor at Physics Today, Barbara Levi, called me into her office, handed me the large stack of clippings, and said, "This is what happens when you use the term nuclear explosion." Many of the articles in the stack identified me as an editor at Physics Today. One of the articles, distributed by the Associated Press for publication in newspapers across the country, reported that I gave an interview on the subject from my office at Physics Today. (The 9 June 1989 article identified me as "William Sweet, a reporter for Physics Today, published by the American Institute of Physics." It went on to say, "In an interview Friday from his New York office, Sweet explained that a Chernobyl-type accident is unlikely in the United States....") I was never warned, reprimanded or disciplined in any way, and I was never told to refrain from writing controversial pieces. I continued my freelance work throughout my years at Physics Today.

In my experience, using office time for freelancing (and using an employer's resources) is ubiquitous in journalism. Book writing by journalists is common, and would be impossible to do completely outside of business hours. Employers benefit by maintaining a writer-friendly environment. For example, freelance work can increase a staff writer's stature and lead to valuable spin-off projects for the employer. Indeed, my Chernobyl article led to a tip that resulted in my writing a major investigative piece on a closely related subject, which Physics Today published.

I hope this information is useful in your investigation. Please let me know if I can be of further assistance.

Sincerely,

S 000785

William Sweet

Subj: Physics Today dismissal
Date: 5/15/2002 7:57:17 PM Eastern Daylight Time
From: cmohr@tndc.org (Chris Mohr)
To: avhawkins@co.pg.md.us ('avhawkins@co.pg.md.us')

Dear Mr. Hawkins,

I was happy to hear from a fellow former Physics Today employee that you are looking into Jeff Schmidt's firing. I was a coworker of Jeff's during the time that he was writing his book, and I think you might be interested in my own experience in devoting some office time to freelance writing. The bottom line is that I find it difficult to believe that the real reason for Jeff's dismissal is that he didn't spend 100 percent of his time in the office on Physics Today work.

I was a member of the editorial staff at Physics Today in New York from early 1991 through late 1993. I am now a director at the Tenderloin Neighborhood Development Corporation in San Francisco, California, where I have worked since 1995.

At Physics Today, my immediate supervisors were Barbara Levi, Gloria Lubkin and Kenneth McNaughton. Theresa Braun was the Director of Human Resources.

I was responsible for editing the "We Hear That" department of the magazine, which consisted mainly of articles about awards and obituaries. Usually, I edited about 5 to 10 obituaries and wrote 1 to 3 awards articles per month. I also edited the calendar section of the magazine and copyedited 1 to 2 feature articles per month.

While at Physics Today, I wrote some articles for small magazines, notably Lies of Our Times (now defunct). That magazine published one long piece detailing scientists' participation in the Gulf War ("The Gulf War and the Technologists," March 1992), as well as several shorter items. I spent upwards of 20 hours working on the long article, of which at least 15 hours were spent at work. (On the other pieces that I wrote while at Physics Today, I would generally write about 80 percent of the article at work and rest at home.) I did all the writing on my computer at work and read all the source material while at work, because the article was based on scientific magazines and publications received by Physics Today. I did this openly and spoke with coworkers about the article. No one ever said anything about my working on this piece.

It was my understanding that AIP, as an institution, encouraged the practice of its employees doing outside writing. Employees of the Institute's history division, for example, published books that were understood to have been written on company time. To my knowledge the Institute never had a policy against its employees pursuing and publishing writing outside the Institute, and doing such work on company time. In general, if I completed my responsibilities in a timely way, I was not given additional work to fill my time.

I hope this information helps in your investigation. I would be happy to address any questions you may have, and so please feel free to contact me. Jeff's firing is a real injustice and would set a bad precedent if left unchallenged. I hope you will take action to reverse it.

Sincerely,

Christopher Mohr
San Francisco, CA
cmohr@tndc.org

S 000786

Prince George's County
HUMAN RELATIONS COMMISSION
1400 McCormick Drive, Suite 245
Largo, Maryland 20774
Telephone (301) 883-6170

IN THE MATTER OF:

Jeff Schmidt
Complainant

Vs.

RE: HRC Case No.: RF00-1135
EEOC Case No.: 12HA10020

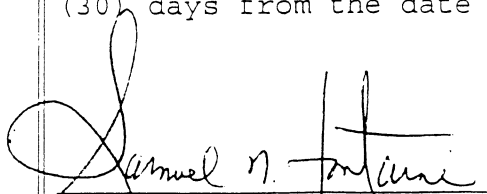
American Institute of Physics
Respondent

COMMISSION ORDER

The Human Relations Commission having been petitioned to review the actions of the Executive Director in the administrative dismissal of the above-referenced complaint, received the recommendations of the Employment Panel, which reviewed the file in this matter.

The Commission at its regularly scheduled meeting on Monday, July 22, 2002, voted to adopt the recommendations of the Employment Panel and Executive Director in re-opening said complaint.

Under Section 2-197(c) of Division 12, Prince George's Code, 1991 edition, as amended, any party aggrieved by a final decision of the COMMISSION in a contested case is entitled to file and appeal pursuant to Subtitle B of the Maryland Rules of Procedure, Annotated Code of Maryland, within thirty (30) days from the date last entered above.



SAMUEL N. FONTAINE
Chairperson
Prince George's County
Human Relations Commission

S 000787

4 February 1998

Hi Graham,

It sounds like you are in a great place, a different world physically and in spirit. News travels far and fast, and so I see that you already know that your coworkers have been treated to a "down under" experience of a very different sort. The description of events that you received was a good one, in my opinion, and shows the skills of a good reporter. I'll give you my report here, because it contains some additional information.

On Thursday 22 January 1998 I met with Charles Harris to ask him to get Stephen Benka off my case. Benka had been pressuring me to stop doing anything that takes up any support staff time at all. I told Harris that support staff can contribute a lot to making the editorial work go well, and that his apparent new policy for support staff work -- that it should give priority to advertising and other revenue-producing work over editorial work -- was bad for the magazine. When Judy was part of the support staff, most of her time was shifted to the Buyers' Guide, which was brought in-house to save money. Now they are shifting more and more of Rita's time to advertising work. And they aren't replacing the lost editorial support. Instead, they are pressuring editorial staff to take on more work. Management philosophy seems to be: Why pay \$15 an hour for clerical work when you can pay \$30? Their real philosophy, of course, is simply to get the editorial staff to do more.

I told Harris that behind all this is the way his salary is structured -- tied to reducing the magazine's budget deficit. To my claim that his salary structure is distorting our priorities, he said that he doesn't always do what is best for his salary. As proof, he pointed out that we usually don't run four feature articles in the magazine. He then quickly changed the subject, realizing, I think, that he has never revealed that his salary is tied to upping our output to four articles per month. By the way, over my objection (and over Bert's indication of support for my objection), they are running four substantial feature articles in the March issue, even though we have no backlog and no additional staff. The other day Harris broke new ground in his privileging of advertising over editorial by bringing his advertising manager to an editorial meeting and letting the needs of advertising set the agenda. They forced the meeting to make a big editorial decision after very little discussion, for the sake of advertising. Warren objected strongly; Gloria called it "bullying."

Harris told me that he is open to hiring more support staff, but that we would have to discuss it first at a staff meeting, possibly the next one. I told him that some of us thought we had already discussed it at length at staff meetings and that the need was clear.

Overall, Harris said that he wasn't inclined to give me much consideration, because of my organizing activity last

year. And he mentioned your name here too, Graham, as another unforgivable transgressor. "You tried to get me fired," he said, speaking either about me alone, or about you and me, or about all those involved. I said that isn't true. He said that if I believe that, then I must be very naive. And his attitude indicated that he doesn't think I believe that and that he doesn't want to even consider the possibility that I do. I think he wants to believe that I tried to get him fired, because according to his value system that would give him both the desire and moral right to fire me or drive me out, which now appears to be his agenda.

In pursuit of that agenda, Harris appears to have given Benka license to go after me and maybe all of management's perceived enemies on the staff. Around 6 pm on Wednesday 28 January 1998, I was in my office talking to Toni on the telephone when Benka opened the door and asked rudely and sarcastically if I was talking to one of our authors. I said, "No, I'm talking to a coworker, Toni." He acted as if he already knew that. He stepped further into my office and said that he wanted in on our conversation. I found this shocking, of course, and unprecedented. I switched Toni to the speakerphone and told her that Steve was here and wanted to be in on our conversation. She sounded equally shocked. Benka suggested that she come over to my office, and she said OK. Without saying anything, I walked out of my office and into the open area of desks just outside, and Benka followed. I did this to make room for Toni and to get some physical distance between myself and a former post office employee who was clearly behaving very strangely. Toni arrived quickly.

Benka asked me and Toni what we had been talking about on the telephone. I thought his question was way out of line, but I nevertheless told him: We had been discussing the May 1998 50th anniversary issue of Physics Today. (That is ironic, because every May-issue meeting that Benka has been a part of has been a disaster. Virtually every member of the staff thinks that that issue has been badly mismanaged, and no one thinks that yet another meeting with Benka is the way to generate the ideas that the magazine desperately needs to salvage it.) But after giving that short answer, I said that the important question is why he was trying to barge in on our conversation.

He said that he is forbidding all private conversations between staff members at work. From now on, all conversations between staff members must be open to management supervision, he said. When I asked him why, he referred to the organizing activity that took place last year and said that he doesn't want that to happen again. (He and Harris have no doubt that I played a leading role in that.) This looked like a retaliatory and repressive policy aimed more at me than at the rest of the staff, and so I

asked him whether or not it applies to everyone. He said it does. I didn't believe him (but I didn't say that I didn't believe him), and so I pressed him three or four times to say whether or not he was going to announce the new policy to the rest of the staff. His final statement was that he knows that I want to know that.

Of course, even if the new repressive policy is not formally announced, no one can afford to take a chance on violating it -- especially Toni and me, to whom it was announced formally. (Paul got a semi-formal announcement, as the discussion took place right outside his door, which was open at the time.) News of management's dim view of private conversations has spread throughout the staff by way of -- yes, you guessed it -- private conversations.

Even though Benka's Gestapo-like enforcement of the new policy was very frightening, in the middle of it all Toni managed to point out that we don't have the bi-weekly Q&A meetings anymore. If management wants to know what the staff is concerned about, they can have such meetings rather than monitor our conversations. Benka ignored her. I think Toni's idea is a good one and should be among our arguments and suggestions.

About half an hour before Benka busted up the telephone conversation between Toni and me, he did something that in retrospect was clearly part of the new repression but at the time felt merely strange and creepy. I had stopped by Toni's office to give her a newspaper article that I thought might interest her. It was about the Clinton/Lewinsky affair, which we had discussed earlier in the day. The article was a brief historical survey showing that presidents who cheated on their wives were more likely to lie to the public as well, justifying public interest in this sort of thing. Toni and I discussed the article briefly and then discussed the 50th anniversary issue. During the latter discussion, Benka opened the door to Toni's office, entered the room and asked if he could join in the conversation. This seemed very strange, of course, especially because he did not know what we were talking about. Toni was perfectly polite in spite of Benka's rude entry. She pointed out the article that I had brought by, dutifully restarting our conversation about it from the beginning for Benka. The three of us discussed the issue for a while, during which Toni and I were treated to editor Benka's view that the press should know its place and not try the president. It was an awkward discussion, because I and maybe Toni (she can speak for herself) were not really interested in speaking with Benka. When we finished the discussion, Benka showed no sign of leaving Toni's office. He indicated in a subtle but clear way that he would not leave first. This was not only bizarre, but also had something of an ugly edge to it. Although we had no idea what was going on, Toni and I acted quickly to undo the

situation -- she by immediately announcing that she had work to do, and I by quickly leaving the room. Benka and I then spoke about feature articles for ten minutes or so at his office. That conversation consisted of me detailing for him all the progress I had made on a number of articles. The discussion was pleasant, although not really necessary, and he acted pleased and calm throughout. However, when we finished talking, I walked toward Toni's office, and Benka followed me. He asked if I was going to Toni's office, and I said yes. He asked if he could come along. By that time he had already followed me most of the way to her office. I told him that she and I were in the middle of a conversation that we had started earlier in the day, and that it would take too long to fill him in on all the background. We discussed this briefly, and he finally suggested that neither one of us go to Toni's office. I didn't say anything one way or the other, and he went back to his office. I noticed a box nearby containing copies of the latest issue of the magazine; I took one and went back to my office. Later, when Toni and I spoke on the telephone about the 50th anniversary issue, we began our conversation by trying, without success, to figure out our supervisor's mysterious and disturbing behavior earlier.

Science & Government Report

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EX-PHYSICS TODAY EDITOR CLAIMS HIDDEN MOTIVES WERE BEHIND FIRING

A former staffer at *Physics Today* magazine, fired nearly a year ago after announcing to the world that he had written a book partly on company time, has taken his campaign against his former employer to the National Labor Relations Board.

Jeff Schmidt alleges in papers filed with the NLRB that his employers seized on the opening sentence of his book, *Disciplined Minds*, as a pretext for firing him after 19 years on the PT staff. The book asserts, teasingly in his view, that he had written it on "stolen" time. PT management was not amused. According to the NLRB filing, he was summarily fired, with the only explanation offered by his boss, PT Editor Stephen Benka, being his admission.

The real reason for his dismissal, Schmidt maintains, was his continual griping about a repressive workplace environment. His complaints, he argues, were made on behalf of his colleagues and were therefore protected by labor statutes.

Schmidt's unfair labor practice charge against the American Institute of Physics, which owns PT, was dismissed by NLRB's Region Five in February for lack of evidence. But his case has since been taken up *pro bono* by a Washington law firm. While the magazine staff isn't unionized, Schmidt attorney Joseph Kolick maintains that labor law bars retaliation against employees

(Continued on p.2)

Q&A: RESEARCH!AMERICA PRESIDENT MARY WOOLLEY

Mary Woolley has headed the oddly punctuated assemblage of 400 universities, pharmaceutical companies, foundations, disease advocacy groups, and other beneficiaries of federal biomedical research funding for 10 of Research!America's 12 years. She spoke with *SGR* last month. The following is the text of the interview, transcribed and edited by *SGR*:

SGR. *Your organization has been most credited with getting the budget-doubling movement at the National Institutes of Health going and keeping it going. Now that that seems assured of success, what do you do next?*

Woolley. First of all, our mission has never been doubling the budget of the NIH. Right from the beginning, our mission has been to make medical and health research a much higher national priority. One of the ways that mission has been operationalized was to initiate and sustain the drive to double the NIH budget. That's just one piece. We see that the president—

(Continued on p.3)



TECHNICAL
INSIGHTS
FROST & SULLIVAN

EX-PHYSICS TODAY EDITOR

(Continued from p.1)

who attempt to improve workplace conditions on behalf of a group, whether formally organized or not. In his appeal of the regional office's dismissal, filed March 16, Schmidt demands his job back with back pay. Should his appeal be accepted, says Kolick, the NLRB general counsel would issue a civil complaint against AIP and a trial would be set before an administrative law judge.

"We think it's obvious that they used his book as a pretext for his firing," Kolick said. "We think we can show that most magazines are perfectly happy to let their employees engage in freelance writing, as long as they get their work done."

To bolster his case, Schmidt included in the appeal sworn affidavits from two former magazine staffers, attesting to the magazine's acceptance, if not encouragement, of freelance activities. In one affidavit, William Sweet, now managing editor of *IEEE Spectrum*, says he was told by the then-editor-in-chief of PT that he was free to pursue freelance projects while at his job. Sweet says he was also assured by AIP's human resources director, Theresa Braun, that he had unlimited long-distance telephone privileges.

"*Physics Today* had an exact way of defining people's jobs," Sweet's affidavit says. "If you did your job, then you were left alone." Sweet said he regularly contributed to *The Bulletin of the Atomic Scientists* while at PT, working on the freelance jobs openly and often discussing them with coworkers. No one from management warned, reprimanded, or disciplined him in any way for his outside work, he adds.

Repeated efforts to obtain comment from PT and AIP officials were unavailing. Benka didn't return a call. Publisher Randolph Nanna referred SGR to Braun, who didn't call back either.

In his appeal documents, Schmidt alleges that his unofficial role as spokesman for the staff got him in hot water with PT management on numerous occasions, making them eager to fire him. Over the years, he says, he sought additional staff to help ease workloads, lobbied for employee involvement in workplace dispute resolution, and urged changes in hiring practices to increase the racial makeup of the staff. The magazine's 16 editors and reporters are white, although some of the support staff are non-white.

In October 1997, the documents state, a half-dozen or so staff presented a written grievance to the magazine's advisory committee, complaining of "an increasingly repressive work environment at the magazine." Staff had endured increasing incidences of "verbal abuse, direct threats of dismissal and warnings about speaking out in front of both *Physics Today* managers and others outside *Physics Today*."

One of the signers of that petition, Jean Kumagai, confirmed Schmidt's contention that she and other staff were discouraged from talking among themselves while at the office. Kumagai, who's now also at *IEEE Spectrum*, said that on numerous occasions managers would show up uninvited during conversations and demand to sit in. One manager once referred to Schmidt as a "ringleader," she said.

While he "expressed some strong-minded views," Schmidt wouldn't have been fired by a company with a more progressive work environment, Kumagai said. The content of Schmidt's book, which deals with the angst of professionals trapped in intellectually unchallenging jobs, might have had something to do with his termination, she speculated, though news accounts quoted Braun asserting that was not the case. The book is something of a manifesto, urging those who populate the middle rungs of institutional ladders to form a union and "fight management's information advantage."

Schmidt says he can't remember how many times he's been asked why he'd want the job back. It's a matter of principle, he says, adding that demanding an offer to return isn't the same as accepting it. But he would take it, he says, at least for awhile, partly because he needs the money.

"People ask me how I could tolerate working in such a repressive environment," he says. "The answer is that I'm used to it, and I can tolerate a repressive environment so long as there's some resistance to it. It's naive to expect managers to be nice guys."

He won a victory of sorts when Maryland's office of unemployment insurance last summer dismissed AIP's attempt to deny the benefits. The state agency ruled that AIP hadn't shown enough evidence to show he'd been fired for misconduct is proof enough of injustice. Those benefits have run out, and Schmidt says he hasn't found other work.

Apart from the legal battle, Schmidt has been working the "public pressure" angle. He provided SGR with a sheaf of letters that have been written on his behalf to PT's and AIP's management since the firing. One of the most recent, dated April 9, was signed by 136 individuals, mostly academics from a wide variety of fields, with a few union officials sprinkled in. Helping solicit its signatures, Schmidt says, was Noam Chomsky, the renowned MIT linguist.

"Your repressive actions harm the reputation of physicists," the letter to AIP Executive Director Marc Brodsky reads. "Worse, your repressive actions discourage free expression and organizing, and thereby work against democracy and social progress."

AIP's affiliation with the University of Maryland has even allowed Schmidt to portray himself a champion of academic freedom. In an April 19 letter to university President Clayton Mote Jr., Schmidt requests that the library privileges he lost with his firing be reinstated, arguing "the speech and action that led to my dismissal is consistent with university principles."

**STATEMENT BY MARC H. BRODSKY, CEO AND EXECUTIVE DIRECTOR
OF THE AMERICAN INSTITUTE OF PHYSICS, PUBLISHER OF *PHYSICS*
TODAY MAGAZINE**

Dear _____,

I am writing in response to your recent inquiry regarding the circumstances surrounding Jeff Schmidt's termination. Since legal proceedings are pending in response to Mr. Schmidt's claims, I am providing only a brief statement of AIP's position. At the outset, please note that there has been no finding that the discharge of Mr. Schmidt violated any federally protected right. AIP is not involved in similar legal proceedings with any other incumbent or former employee. Also, I personally assure you that Mr. Schmidt's termination had nothing to do with the subject matter of his book.

Some who have written to me, made reference to APS. APS was not Mr. Schmidt's employer. AIP was.

Mr. Schmidt was discharged by AIP after he stated, in the introduction to his book, that it was written on "stolen time." To me, the reference to writing it on "stolen time" either meant or implied that he wrote the book on paid work time, when, in my opinion, he should have been devoting his energies to AIP. In brief, while being paid by AIP, Mr. Schmidt's comment communicates, in our view, that he was pursuing activities beyond what he was supposed to be doing on work time.

AIP supports the right of all employees to seek guidance from the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board or any other government agency to present questions regarding their employment or the termination thereof. AIP firmly believes that it has not engaged in any improper behavior. To date, no agency has found that AIP violated any law. In fact, below I quote from the findings of the NLRB, which dismissed Mr. Schmidt's unfair labor practice charge.

"The evidence in this regard indicates that Mr. Schmidt had a non-work related book published which contained an introduction with the following words: 'This book is stolen. Written in part on stolen time, that is. I felt that I had no choice but to do it that way....'"

The NLRB also rejected Mr. Schmidt's contention that he did not actually "steal" company time, but "merely engaged in literary hyperbole in his book introduction." The NLRB found that:

"given the nature of the work involved in this matter, it was concluded that the Employer has some justification for taking Mr. Schmidt at his word rather than treating this as a mere literary device to catch the interest of a reader. Moreover, and most significantly, even if Mr. Schmidt did not actually work on his book project on company time, by asserting that he did, he served to undercut Employer's efforts at enhancing employee productivity."

I hope that you find these brief remarks to be responsive to your questions and concerns. I hope you can appreciate our position. AIP is committed to the physics community and to its members. As an employer, we try to act appropriately. We are proud of our work atmosphere and the high morale of our employees. Thank you for your interest.

Marc Brodsky
August 31, 2001

S 000794

PROTESTS FORCE *PHYSICS TODAY* TO REVEAL ITS UNSOUND CASE

For many months after *Physics Today* fired Jeff Schmidt over his book *Disciplined Minds*, the magazine refused to respond to, or even acknowledge, the many letters of protest it was receiving. Then, in August 2001, as pressure mounted, Marc Brodsky, head of the American Institute of Physics, which publishes *Physics Today*, mentioned to some concerned physicists that “AIP may be forced to issue a public statement.” A week later, the American Institute of Physics finally broke its silence.

Some people had given *Physics Today* the benefit of the doubt, figuring that there must be some unstated compelling reason why Jeff deserved to be fired. Brodsky’s statement should provide an assurance that no such reason exists.

Moreover, a close look at Brodsky’s statement points to the real reasons for Jeff’s dismissal — namely, the critical nature of his book and his history of workplace activism. Far from justifying AIP’s actions, Brodsky’s statement verifies in many ways that the Institute’s behavior in this case has been unacceptably out of line with the values and expectations of the community that it is supposed to serve and represent to the world:

1. Brodsky claims that he fired Jeff on the sole basis of the opening lines of *Disciplined Minds*, in which Jeff dramatizes the fact that he wrote the book in part at the office. But Brodsky knows that AIP employees engage in a wide variety of spare-time activity at work — chatting with coworkers, writing personal e-mail, making personal phone calls, surfing the Web and so on — and he has never punished anyone for that, or even discouraged it. Yet he says he fired Jeff for “pursuing activities beyond what he was supposed to be doing on work time,” or, if not actually that, then at least “asserting that he did.” Jeff received much praise for his work at *Physics Today*, from his supervisors, from the authors of the articles he edited and from members of the physics community. What made his workplace activities beyond his assignments grounds for firing, if not the critical nature of those activities?

2. Brodsky claims that Jeff’s “termination had nothing to do with the subject matter” of his book. But then he approvingly quotes the National Labor Relations Board’s explanation that it is an assessment of the book as a whole — a view of “the nature of the work involved in this matter” — that allows AIP to read the book’s introduction in a way that justifies firing Jeff.

3. Brodsky’s emphasis on his legal right to fire Jeff misses the point. “No agency has found that AIP violated any law,” boasts Brodsky. But the hundreds of physicists and others who are speaking out in this case aren’t saying that Jeff’s dismissal was illegal, but rather that it violated the physics community’s norms of tolerance for differing viewpoints, norms that are essential for the community’s functioning and credibility.

Brodsky cites the National Labor Relations Board as the authority in this case. However, the NLRB's sole mission is to determine whether there has been a violation of the National Labor Relations Act of 1934, which made employee organizing a legally protected activity but did not protect book writing. The NLRB is not the appropriate body to determine what is right or wrong for the physics community, nor is any other government agency or court.

4. It's surprising that Brodsky would even mention the NLRB, because, as he himself must know, the agency's investigation found *Physics Today* to be a repressive and vengeful employer. Brodsky hides this fact by quoting very selectively from the NLRB's findings, focusing on employer rights. He does not quote the findings most relevant to the concerns of the physics community and others who value free expression. The findings were reported by NLRB General Counsel Arthur F. Rosenfeld — a former U.S. Chamber of Commerce lawyer appointed by George W. Bush and no friend of workplace organizers and activists. According to Rosenfeld...

"The evidence adduced during the Regional Office investigation established a prima facie case that Charging Party Jeff Schmidt was discharged for engaging in protected concerted activities. Thus, the evidence indicated that Jeff Schmidt engaged in extensive protected activity for over a decade, that the Employer had knowledge that Schmidt was engaged in such activity, and that the Employer bore animus towards Schmidt for engaging in such activity."

The "protected activity" here is the workplace organizing that Jeff had been doing.

Rosenfeld also took into account what he called *Physics Today*'s "threats of discipline and other retaliatory conduct in order to discourage employees from discussing working conditions with each other and informing the Employer of their collective concerns." And he noted that such behavior "is conduct violative of the National Labor Relations Act."

Nevertheless, a private corporation in the United States has the legal right to fire an employee for writing a book it doesn't like. So the NLRB concluded that while *Physics Today* may very well have engaged in numerous illegal repressive activities, firing Jeff over the book could not be counted as one of them. With Jeff's firing excluded from the case, the NLRB decided, as a matter of prosecutorial discretion, not to take action on the rest of the case. (The NLRB is not required, and does not have the resources, to prosecute all illegal activity.) Thus *Physics Today* escaped prosecution, but not, as Brodsky implies, because of its exemplary or even legal behavior. A high standard indeed for an organization representing the physics community!

Jeff's book is critical of management and critical of the political subordination of working scientists and other salaried professionals. By firing Jeff, Marc Brodsky, *Physics Today* and the American Institute of Physics, as well as the American Physical Society and the other

organizations that govern AIP, have made it clear that they are more interested in enforcing that subordination than in living up to the physics community's norms of free expression.

AIP's statement is weak and legalistic, and confirms the worst fears of Jeff's many supporters. We ask, more resolutely than ever, that *Physics Today* do the right thing and give Jeff his job back.

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14 January 2002

Marc Brodsky, Executive Director
American Institute of Physics
One Physics Ellipse
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Dear Dr. Brodsky:

As individuals concerned with freedom of expression and freedom to organize, we were dismayed to learn of your recent dismissal of Jeff Schmidt, who had been an articles editor at *Physics Today* magazine for over 19 years. We urge you to reconsider your decision.

As we understand it, you fired Jeff after you saw his book, *Disciplined Minds*, and in particular after your discovery that Jeff used some of his spare time at the office for critical writing. You were evidently not deterred by the fact that during the years that Jeff was writing the book, *Physics Today* gave him two promotions and 19 salary increases based explicitly on the quantity and quality of his work for the magazine, which it scrutinized closely.

The fact that you dismissed Jeff after so many years of service not only without a hearing, but also without asking him a single question about the book or anything else, suggests that you were looking for an opportunity to get rid of him. Indeed, we understand that you were displeased with Jeff's workplace activism and had tried to silence him through a number of very repressive measures short of dismissal.

As you know, Jeff worked with other *Physics Today* staff members to improve working conditions, increase staff participation in decision-making, broaden the narrow range of viewpoints allowed in the magazine, make the salary structure fairer and diversify the staff. (At the time you fired Jeff, *Physics Today*'s large editorial staff was all white above the secretarial level.)

Because you are the head of the American Institute of Physics, your repressive actions harm the reputation of physicists. Worse, your actions discourage free expression and organizing, and thereby work against democracy and social progress. We ask you to take a step toward undoing the damage you have done. Give Jeff his job back.

Sincerely, (affiliations listed for identification only)

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